TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 318 41

JOHN W. RAST, TAX COLLECTOR FOR DUVAL COUNTY, STATE OF FLORIDA, ET AL., APPELLANTS,

vs.

VAN DEMAN AND LEWIS COMPANY, THE HARKISHEIMER COMPANY, J. S. PINKUSSOHN CIGAR COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

FILED DECEMBER 26, 1913.

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1 In the District Court of the United States for the Southern District of Florida. In Chancery.

VAN DEMAN AND LEWIS COMPANY, a Corporation Organized and Existing under the Laws of the State of Florida; The Harkisheimer Company, a Corporation Organized and Existing under the Laws of the State of Florida; J. S. Pinkussohn Cigar Company, a Corporation Organized and Existing under the Laws of the State of South Carolina; The Forsyth Company, a Corporation Organized and Existing under the Laws of the State of Florida; Joseph R. Mickler, Eli Witt, Complainants,

vs.

JOHN W. RAST, Tax Collector for Duval County, State of Florida; William A. Hallows, Jr., State Attorney for Fourth Judicial Circuit, State of Florida; L. D. Howell, County Solicitor for Duval County, State of Florida; R. B. McLendon, Tax Collector for Dade County, State of Florida; John C. Gramling, State Attorney for Eleventh Judicial Circuit, State of Florida; James T. Sanders, County Solicitor for Dade County, State of Florida; William L. Colbert, Tax Collector for Marion County, State of Florida; John L. Branch, Tax Collector for Hillsborough County, State of Florida; George P. Raney, State Attorney for Sixth Judicial Circuit, State of Florida; William H. Jackson, County Solicitor for Hillsborough County, State of Florida; E. B. McMullen, Tax Collector for Pinellas County, State of Florida; A. M. McMullen, Prosecuting Attorney for Pinellas County, State of Florida; J. A. McLeod, Tax Collector for Suwannee County, State of Florida; C. A. Hardee, State Attorney for Third Judicial Circuit, State of Florida; Charles E. Allen, Tax Collector for Citrus County, State of Florida; George W. Scofield, State Attorney for Fifth Judicial Circuit, State of Florida; D. P. Smith, Tax Collector for Volusia County, State of Florida; C. D. Landis, State Attorney for Seventh Judicial Circuit, State of Florida; R. P. Hamlin, County Solicitor for Volusia County, State of Florida; B. M. Dowling, Tax Collector for Bradford County, State of Florida; A. V. Long, State Attorney for Eighth Judicial Circuit, State of Florida; T. H. Easterling, Tax Collector for Manatee County, State of Florida; J. B. Singletary, State Attorney for Tenth Judicial Circuit, State of Florida; J. L. Collier, Prosecuting Attorney for Manatee County, State of Florida; T. A. Sweeting, Tax Collector for Monroe County, State of Florida; E. P.
2 Roberts, County Solicitor for Monroe County, State of Florida; W. E. Martin, Tax Collector for Orange County, State of Florida; L. G. Starbuck, County Solicitor for Orange County, State of Florida; C. L. Bandy, Tax Collector for Osceola County, State of Florida; H. B. Geiger, Prosecuting Attorney for Osceola County, State of Florida; F. Marion Lanier, Tax Col-

lector for Polk County, State of Florida; R. B. Huffaker, Prosecuting Attorney for Polk County, State of Florida; T. J. Campbell, Tax Collector for Palm Beach County, State of Florida; Gordan R. Broom, Prosecuting Attorney for Palm Beach County, State of Florida; A. M. Driggors, Tax Collector for Baker County, State of Florida; Philip H. Wright, Tax Collector for Brevard County, State of Florida; Arch J. Murrhee, Tax Collector for Clay County, State of Florida; W. M. Dowling, Tax Collector for Columbia County, State of Florida; Cyril Baldwin, Tax Collector for De Soto County, State of Florida; S. J. Hewitt, Tax Collector for Hamilton County, State of Florida; John C. Law, Tax Collector for Hernando County, State of Florida; R. L. Nutt, Tax Collector for Lake County, State of Florida; Henry A. Blake, Tax Collector for Lee County, State of Florida; Samuel J. Ellison, Tax Collector for Madison County, State of Florida; J. D. Ogilvie, Tax Collector for Nassau County, State of Florida; William L. Mobley,
4 Tax Collector for Pasco County, State of Florida; R. J. Hancock, Tax Collector for Putnam County, State of Florida; H. H. Floyd, Tax Collector for St. Johns County, State of Florida; Frank M. Tyler, Tax Collector for St. Lucie County, State of Florida; John B. Jinkins, Tax Collector for Seminole County, State of Florida; J. H. Hughes, Tax Collector for Sumter County, State of Florida; J. S. Roberts, Tax Collector for Escambia County, State of Florida; John P. Stokes, State Attorney for First Judicial Circuit, State of Florida; Scott M. Loftin, County Solicitor for Escambia County, State of Florida; C. S. Curtis, Tax Collector for Gadsden County, State of Florida; George W. Walker, State Attorney for Second Judicial Circuit, State of Florida; J. Baxter Campbell, Prosecuting Attorney for Gadsden County, State of Florida; Hinton Folsom, Tax Collector for Jackson County, State of Florida; R. H. Buford, State Attorney for Ninth Judicial Circuit, State of Florida; H. B. Tiller, Tax Collector for Washington County, State of Florida; A. D. Carmichael, Prosecuting Attorney for Washington County, State of Florida; G. W. Miller, Tax Collector for Alachua County, State of Florida; J. B. Blackwell, Tax Collector for Bay County, State of Florida; J. T. Grayson, Tax Collector for Calhoun County, State of Florida;
G. W. Hinsey, Tax Collector for Franklin County, State
5 of Florida; J. W. Johnson, Tax Collector for Holmes County, State of Florida; Edwin W. Tucker, Tax Collector for Jefferson County, State of Florida; S. R. Lanfston, Tax Collector for La Fayette County, State of Florida; Walter A. Demilly, Tax Collector for Leon County, State of Florida; John L. Carter, Tax Collector for Levy County, State of Florida; C. Morgan Deason, Tax Collector for Liberty County, State of Florida; John W. Helms, Tax Collector for Santa Rosa County, State of Florida; Alton C. Hendry, Tax Collector for Taylor County, State of Florida; W. G. Durrance, Tax Collector for Wakulla County, State of Florida; James A. McLean, Tax Collector for Walton County, State of Florida, Defendants.

To the Honoroable Rhydon M. Call, Judge of the District Court of the United States for the Southern District of Florida, in Chancery:

The Complainants, Van Deman and Lewis Company, a corporation organized and existing under the laws of the State of Florida, a citizen of the State of Florida and a resident of the said Southern District of Florida, having its principal place of business in the City of Jacksonville, Duval County, Florida, and having a branch place of business in the City of Miami, in Dade County, Florida; The Harkisheimer Company, a corporation organized and existing under
the laws of the State of Florida, a citizen of the State of
6 Florida and a resident of the Southern District of Florida,
having its principal place of business in Jacksonville, in Duval County, State of Florida; J. S. Pinkussohn Cigar Company, a corporation organized and existing under the laws of the State of South Carolina, a citizen of the State of South Carolina, but having a place of business and doing business in said Southern District of Florida, in the city of Jacksonville, in Duval County, State of Florida, and also having a place of business and doing business in the City of Pensacola, in Escambia County, State of Florida; The Forsyth Company, a corporation organized and existing under the laws of the State of Florida, a citizen of the State of Florida and a resident of said Southern District of Florida, having its principal place of business in the City of Jacksonville, in Duval County, State of Florida; Joseph R. Mickler, a citizen of the State of Florida and a resident of the Southern District of Florida, residing and having his principal place of business in the City of Tampa, in the County of Hillsborough, in the State of Florida; and Eli Witt, a citizen of the State of Florida and a resident of the said Southern District of Florida, residing and having his principal place of business in the City of Tampa, in the County of Hillsborough, in the State of Florida, bring this their Bill of Complaint, on behalf of themselves and others similarly situated, who have a general interest in the subject of the action and in obtaining the relief demanded or prayed herein and to whom the questions involved herein are of general interest, and who constitute a class so numerous as to make it impracticable to bring them all before the Court, against, John W. Rast, Tax Collector for Duval County, State of Florida; William A. Hallowes, Jr., State Attorney for Fourth Judicial Circuit, State of Florida; L. D. Howell, County Solicitor for Duval County, State of Florida; R. B. McLendon, Tax Collector for Dade County, State of Florida; John C. Gramling, State Attorney for Eleventh Judicial Circuit, State of Florida; James T. Sanders, County Solicitor for Dade County, State of Florida; William L. Colbert, Tax Collector
for Marion County, State of Florida; John L. Branch, Tax
7 Collector for Hillsborough County, State of Florida; George
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for Suwannee County, State of Florida; C. A. Hardee, State Attorney for Third Judicial Circuit, State of Florida; Charles E. Allen, Tax Collector for Citrus County, State of Florida; George W. Scofield, State Attorney for Fifth Judicial Circuit, State of Florida; D. P. Smith, Tax Collector for Volusia County, State of Florida; C. D. Landis, State Attorney for Seventh Judicial Circuit, State of Florida; R. P. Hamlin, County Solicitor for Volusia County, State of Florida; B. M. Dowling, Tax Collector for Bradford County, State of Florida; A. V. Long, State Attorney for Eighth Judicial Circuit, State of Florida; T. H. Easterling, Tax Collector for Manatee County, State of Florida; J. B. Singletary, State Attorney for Tenth Judicial Circuit, State of Florida; J. L. Collier, Prosecuting Attorney for Manatee County, State of Florida; T. A. Sweeting, Tax Collector for Monroe County, State of Florida; E. P. Roberts, County Solicitor for Monroe County, State of Florida; W. E. Martin, Tax Collector for Orange County, State of Florida; L. G. Starbuck, County Solicitor for Orange County, State of Florida; C. L. Bandy, Tax Collector for Osceola County, State of Florida; H. B. Geiger, Prosecuting Attorney for Osceola County, State of Florida; F. Marion Lanier, Tax Collector for Polk County, State of Florida; R. B. Huffaker, Prosecuting Attorney for Polk County, State of Florida; T. J. Campbell, Tax Collector for Palm Beach County, State of Florida; Gordan R. Broom, Prosecuting Attorney for Palm Beach County, State of Florida; A. M. Driggers, Tax Collector for Baker County, State of Florida; Philip H. Wright, Tax Collector for Brevard County, State of Florida; Arch J. Murrhee, Tax Collector for Clay County, State of

8 Florida; W. M. Dowling, Tax Collector for Columbia County, State of Florida; Cyril Baldwin, Tax Collector for De Soto County, State of Florida; S. J. Hewitt, Tax Collector for Hamilton County, State of Florida; John C. Law, Tax Collector for Hernando County, State of Florida; R. L. Nutt, Tax Collector for Lake County, State of Florida; Henry A. Blake, Tax Collector for Lee County, State of Florida; Samuel J. Ellison, Tax Collector for Madison County, State of Florida; J. D. Ogilvie, Tax Collector for Nassau County, State of Florida; William L. Mobley, Tax Collector for Pasco County, State of Florida; R. J. Hancock, Tax Collector for Putnam County, State of Florida; H. H. Floyd, Tax Collector for St. Johns County, State of Florida; Frank M. Tyler, Tax Collector for St. Lucie County, State of Florida; John B. Jenkins, Tax Collector for Seminole County, State of Florida; J. H. Hughes, Tax Collector for Sumter County, State of Florida; all of whom are citizens of the State of Florida and residents of the Southern District of Florida; J. S. Roberts, Tax Collector for Escambia County, State of Florida; John P. Stokes, State Attorney for First Judicial Circuit, State of Florida; Scott M. Loftin, County Solicitor for Escambia County, State of Florida; C. S. Curtis, Tax Collector for Gadsden County, State of Florida; George W. Walker, State Attorney for Second Judicial Circuit, State of Florida; J. Baxter Campbell, Prosecuting Attorney for Gadsden County, State of Florida; Hinton Folsom, Tax Collector for Jackson County, State of Florida; R. H. Buford, State Attorney for Ninth Judicial Circuit, State of Florida;

H. B. Tiller, Tax Collector for Washington County, State of Florida; A. D. Carmichael, Prosecuting Attorney for Washington County, State of Florida; G. W. Miller, Tax Collector for Alachua County, State of Florida; J. B. Blackwell, Tax Collector for Bay County, State of Florida; J. T. Grayson, Tax Collector for Calhoun County, State of Florida; G. W. Hinsey, Tax Collector for Franklin County, State of Florida; J. W. Johnson, Tax Collector for Holmes County, State of Florida; Edwin W. Tucker, Tax Collector for Jefferson County, State of Florida; S. L. Lanfston,
9 Tax Collector for La Fayette County, State of Florida; Walter A. Demilly, Tax Collector for Leon County, State of Florida; John L. Carter Tax Collector for Levy County, State of Florida; G. Morgan Deason, Tax Collector for Liberty County, State of Florida; John W. Helms, Tax Collector for Santa Rosa County, State of Florida; Alton C. Hendry, Tax Collector, Taylor County, State of Florida; W. G. Durrance, Tax Collector for Waukulla County, State of Florida; James A. McLean, Tax Collector for Walton County, State of Florida; all of whom are citizens of the State of Florida and residents of the Northern District of Florida; and thereupon Complainants complain and allege:

I.

That the said complainants are engaged in business as follows, to-wit:

Said Van Deman and Lewis Company was long before the passage of or enactment of the Statute of the State of Florida hereinafter mentioned and still is engaged in and was and is carrying on the business of a merchant and buying and selling merchandise namely the business of a wholesale grocer buying and selling wholesale groceries and such articles of merchandise as are commonly and usually dealt in by a wholesale grocer and having its principal place of business, offices, store and warehouse in the City of Jacksonville, County of Duval and State of Florida, with a branch establishment, store and warehouse in the City of Miami, County of Dade, State of Florida and doing such business and selling such groceries and merchandise to customers over and in large portions of the State of Florida including the counties of Duval, Dade, Marion and many other counties of said State.

That said complainant Harkisheimer Company was long before the passage of or enactment of the Statute of the State of Florida hereinafter mentioned and still is engaged in and was and is carrying on the business of a retail merchant and buying and selling
10 merchandise namely the business of a retail grocer buying and selling groceries and such articles of merchandise as are commonly or usually dealt in by a retail grocer and having its place of business office and store in the City of Jacksonville, County of Duval and State of Florida, and doing such business and selling such groceries and merchandise to customers at and from its said store.

That said complainant J. S. Pinkussohn Cigar Company was long before the passage of or enactment of the Statute of the State of Florida hereinafter mentioned and still is engaged in and was and is

carrying on the business of a merchant and buying and selling merchandise, namely the business of a wholesale and retail merchant buying and selling cigars, cigarettes, smoking tobacco, chewing tobacco and such articles of merchandise as are commonly or usually dealt in by a tobacco merchant, and having offices and a number of stores to-wit, four stores in the said City of Jacksonville and one store in the City of Pensacola in the County of Escambia in the State of Florida, and doing such business and selling such merchandise to customers at and from its said stores.

That said complainant The Forsyth Company was long before the passage of or enactment of the Statute of the State of Florida hereinafter mentioned and still is engaged in and was and is carrying on the business of a merchant and buying and selling merchandise, namely the business of a wholesale and retail merchant buying and selling cigars, cigarettes, smoking tobacco, chewing tobacco and such articles of merchandise as are commonly or usually dealt in by a tobacco merchant, and having its place of business and office and store in the City of Jacksonville, County of Duval and State of Florida, and doing such business and selling such merchandise to customers at and from its said store.

That said complainant Joseph R. Mickler was long before the passage of or enactment of the Statute of the State of Florida hereinafter mentioned and still is engaged in and was and is carrying on the business of a retail merchant and buying and selling merchandise, namely the business of a retail grocer, buying and selling

11 groceries and such articles of merchandise as are commonly or usually dealt in by a retail grocer, and having his place of business, office and store in the City of Tampa, Hillsborough County, State of Florida, and doing such business and selling such groceries and merchandise to customers at and from his said store.

That said complainant Eli Witt was long before the passage of or enactment of the Statute of the State of Florida hereinafter mentioned and still is engaged in and was and is carrying on the business of a merchant and buying and selling merchandise, namely the business of a wholesale grocer buying and selling wholesale groceries and such articles of merchandise as are commonly or usually dealt in by a wholesale grocer and having his principal place of business, office, store and warehouse in the City of Tampa, County of Hillsborough and State of Florida and doing such business and selling such groceries and merchandise to customers over and in large portions of the State of Florida including the County of Hillsborough and in many of the counties of said State.

II.

That the said complainants and each of them in carrying on their respective business in said state and in said counties and cities as hereinbefore mentioned have bought, sold, offered for sale and dealt in various and numerous articles of merchandise in their respective lines of business, which are manufactured or produced in states of the United States of America other than the State of Florida by persons and corporations in such other states, and are shipped by such

persons and corporations from such other states into the State of Florida to be sold and dealt in in the State of Florida, said transactions being interstate commerce between different states of said United States. That a great many of such manufacturers and producers of various lines of merchandise so manufactured and produced in states of the United States other than the State of Florida, and which are shipped into the State of Florida, as aforesaid,
12 do for the purpose of advertising their business and increasing the volume of their sales enclose in the packages in which said merchandise is put up for market and sale coupons, slips, certificates and other profit-sharing discount or premium tokens, including among others the following articles manufactured in or shipped from the several places hereinafter mentioned by the several persons and corporations hereinafter mentioned: Celluloid Starch by Celluloid Starch Company, New York, New York; Octagon Soap by Colgate and Company, New York, New York; Santa Claus Soap by N. K. Fairbanks Company, Chicago, Illinois; Export Soap, Pearl Soap, Everywomans Soap, Grandmas Wash Powder by Globe Soap Company, Cincinnati, Ohio; Coaline Soap by Manhattan Soap Company, New York, New York; 20 Mule Team Borax by Pacific Coast Borax Company, New York, New York; 3 in 1 Oil by Three in One Oil Company, New York, New York; Sterling Ball Potash, Rumford Baking Powder by H. M. Anthony Company, New York, New York; Good Luck Baking Powder by Southern Manufacturing Company, Richmond, Virginia; Purity Oats by Purity Oats Company, Keokuk, Iowa; Arbuckles Coffee by Arbuckle Brothers, New York, New York; Luzianne Coffee by Reily Taylor Company, New Orleans, Louisiana, Argo Starch by National Starch Company, New York, New York; Electro Silicon by Electro Silicon Company, New York, New York; Drugs and Extracts by McCormick and Company, Baltimore, Maryland; Cigarettes and Tobaccos by Liggett and Meyers Tobacco Company, St. Louis, Missouri, by S. Anorgyros, Jersey City, New Jersey, by Markoroff Cigarette Company, Boston, Massachusettes, by American Tobacco Company, New York, New York; Cigars by I. Lewis Cigar Manufacturing Company, Newark, New Jersey, and by Federal Cigar Company, Jersey City, New Jersey; Syrups by Dunbar Syrup and Molasses Company, New Orleans, Louisiana; Syrups by Towles Maple Product Company, St. Paul, Minnesota; Soaps by Swift and Company Soap Works, Chicago, Illinois; Obelisk Flour by Ballard and Company, Louisville, Kentucky; None Such Mince
13 Meat by Merrill-Soule Company, Syracuse, New York; and many other articles of merchandise manufactured by many other persons and companies.

III.

That the manner or method of disposing of and redeeming, taking up or paying such coupons, slips, certificates or other tokens is that the same are enclosed in packages or the wrappers thereof, or are a part of the wrappers thereof, such packages are put in boxes, cases or other receptacles or enclosures and shipped by the manufacturer or producer from his place of business out of the State of Florida,

as aforesaid, to the merchant in the State of Florida, generally to a wholesale merchant or jobber, and such boxes, cases or enclosures containing such packages with coupons, certificates or the like, as aforesaid are received by the wholesale merchant or jobber in Florida and sold to the retail merchant in said State. The retail merchant generally opens the said boxes, cases or enclosures containing such packages with coupons, certificates or the like and sells them to his customers. The customer takes such coupons, certificates or the like out of such articles or packages, or from the wrappers thereof, and when he has accumulated a sufficient number of them to entitle him to receive a premium or article or payment therefor, according to some list, catalogue or rules, promulgated by the manufacturer or the producer making or shipping the article from without the State of Florida, he sends such coupons, certificates or the like to such manufacturer, producer or original shipper of the article, out of the State of Florida, or, in some instances, to a company or agency in some State of the United States outside of the State of Florida, and such coupons, certificates or the like are redeemed or paid or the article which such purchaser has selected from such list, catalogue or the like is sent to him, in consideration of and for such coupons, certificates or the like, or for the same and a postage stamp or stamps, or a small sum of money in addition thereto. In all such cases the coupons, slips, certificates or tokens are put in the articles or in the wrappers thereof, or are a part of the wrappers thereof, by the manufacturer, producer or shipper in a State of the United States, outside of the State of Florida, and shipped into the State of Florida to be delivered by the merchant in Florida selling the articles to the purchaser thereof, and entitling the purchaser thereof, upon a contract, agreement, or sale made to him by the manufacturer, shipper or producer outside of the State of Florida, that upon such purchaser buying such merchandise, made shipped or sold by such manufacturer, shipper or producer outside of the State of Florida, and shipped into Florida, as aforesaid, that upon the return by such purchaser of a certain number of such coupons, certificates or the like to such manufacturer, producer or shipper, in a State of the United States outside of the State of Florida, or upon the return of such coupons, certificates or the like with the addition of a postage stamp or stamps or a small sum of money, that such manufacturer or producer will sell or exchange therefor some article of merchandise of value selected by such purchaser from a list or catalogue, as aforesaid, and will ship or send such article from such place outside of the State of Florida to such purchaser in the State of Florida.

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Complainants are advised and allege that all said transactions, not only the sale and shipment by the manufacturer or producer from outside of the State of Florida, as aforesaid, to the wholesaler or jobber in the State of Florida, as aforesaid, of boxes, cases or receptacles containing packages which contain or have in the wrappers such coupons or certificates or the like, as aforesaid, and the sale of such boxes, cases or receptacles by the wholesaler or jobber to the retail merchant, but, also, the sale by the retail merchant to his

customers of the packages containing or having in the wrappers, or otherwise attached thereto, such coupons, certificates or the like, and the sending or returning by such purchasers of such coupons, certificates or the like, or of the same with the addition of postage
15 stamp or stamps or of a small sum of money, to the manufacturer, producer or shipper, who shipped or sent the same from a State outside of the State of Florida, as aforesaid, or to a redemption or premium agency, company or establishment in a State of the United States outside of the State of Florida, is an interstate commerce.

That the form of such coupons, certificates, slips or tokens varies and there are many different kinds of the same, as, for instance, one consists of a fac-simile of the signature of the firm manufacturing or shipping the article, which appears upon the wrapper of the package and evidences that the purchaser of the package has bought a definite part of some article, to be selected by him or her from a certain list, subject only to the condition that the signature on the package is to be cut out and returned to the manufacturer or shipper as a voucher, in accordance with printed directions, and the list shows a number of valuable articles of merchandise which can be paid for by a certain number of said signatures and a two cent stamp; another form is where there is a certain word or name of the article on the wrapper and the purchaser by cutting out such word or name and sending a certain number of the same to the manufacturer or shipper of the article and designating the premium which such person desires from a list, issued by such manufacturer or shipper, gets such premium article therefor; another form is where the coupon or certificate of a redemption or coupon agency or corporation is enclosed by the manufacturer or shipper of the article in the package and the purchaser upon opening the package takes out such coupon or certificate and when he has accumulated a certain number thereof sends the same, to a State outside of the State of Florida, to such redemption or coupon agency or corporation and exchanges the same for, or purchases with the same, a valuable article of merchandise which the purchaser selects from a list or catalogue that is furnished him; another form of such coupons, slips, certificates or tokens is where each of the same is good for a certain value, for instance, one-half cent in presents or premiums, the purchaser
16 sending the same on to the manufacturer or shipper from Florida to another state, as aforesaid, and purchasing a valuable article of merchandise and paying for the same with such coupons or certificates at the valuation that is affixed to the same and selecting the article from a catalogue or list. There are, also, other forms and methods of and in connection with such coupons, slips, certificates or tokens used in connection with the selling or shipping of merchandise from other States of the United States into the State of Florida and the sale of the same, as aforesaid, and the sending of such coupons, slips, certificates or tokens from the State of Florida to other States to be redeemed, paid for or used in the purchase of other articles of merchandise or in the accumulation of premiums or the like. All the articles of merchandise with which

such coupons, slips, certificates or other tokens are so shipped or used are well known and generally or frequently or largely used and legitimate articles of commerce. And all such transactions and all such coupons, slips, certificates and tokens and the use thereof is, as complainants are advised and so allege, interstate commerce.

IV.

Complainants further allege that there are divers forms and methods of use of coupons, slips, certificates or tokens, in connection with the sale of merchandise used by merchants of the State of Florida, substantially in similar form to those mentioned above, in which above mentioned cases the payment or redemption in premiums is made or given outside of the State of Florida, but in the class of cases now being stated the payment or redemption is made by the Florida merchant, in the State of Florida, sometimes by the delivery of some valuable article of merchandise; sometimes by the payment of cash or the allowance of credit on account of purchase being in the nature of a discount or for or on account of a certain amount having been purchased of the merchant by the customer.

These certificates or tokens in addition to being in the forms
17 of coupons or certificates, as above mentioned, sometimes are in the form of a cash register slip or memorandum and are in various other forms.

V.

Complainants further allege that each of the said complainants in its or his line of business, as aforesaid, has been, long prior to the enactment of said Statute and still is, engaged in selling and delivering to customers the articles of merchandise above mentioned and various other articles of merchandise such as are sold and dealt in in the said line of business of each of said Complainants, respectively, with coupons, slips, certificates or other tokens such as are hereinabove mentioned or described and others of similar character, although varying in detail.

That the use of such coupons, slips, certificates or other tokens are methods of advertising the several articles of merchandise or of advertising the several businesses of the several Complainants and also advertising the businesses of the manufacturers, shippers or producers outside of the State of Florida, who ship such several articles with such coupons, slips, certificates or other tokens into the State of Florida, as aforesaid. Also the use of such coupons, slips, certificate or other tokens, as aforesaid, induces purchasers to trade more largely with and to make more of their purchases from Complainants on account of the additional inducements of such coupons, slips, certificates or other tokens, and the same increase the businesses of Complainants, and their profits from their business and enable Complainants to carry and sell stocks of goods covering the various articles of merchandise with which such coupons, slips, certificates or other tokens are delivered, as aforesaid, and are of great importance and value to the said several Complainants in their said several businesses, and if they are prevented from so using or

delivering the same their said several businesses will be greatly reduced in the lines of merchandise carried and sold therein,
18 and in the amount of business done therein and in the receipts and profits thereof, and by the loss of customers, to-wit: to the amount of many thousands of dollars as to each of them. Also, each of said Complainants prior to and at the time of the enactment of such Statute had on hand and in their stocks of merchandise large amounts and quantities of such articles of merchandise which are sold and delivered with such coupons, slips, certificates or other tokens, as aforesaid, and the same was true at the time that said Statute took effect, as aforesaid, and is so at the present time, and if Complainants are or shall be prevented from selling and delivering such articles of merchandise with such coupons, slips, certificates or other tokens, as aforesaid, each of said Complainants will be subjected to great loss and damage and much hindered, embarassed and injured in their businesses and the value of their said property on hand, as aforesaid, will be destroyed or greatly lessened.

VI.

That by the use of the system of delivering such coupons, slips, certificates or other tokens with merchandise sold, the merchant is enabled to give a discount to purchasers or to give an additional value to purchasers in the shape of the premiums or articles sold for or exchanged for such coupons, slips, certificates or other tokens, and the purchasers of such articles of merchandise are substantially benefited thereby.

VII.

Complainants further allege that in the issuance, redemption or payment of such coupons, slips, certificates or other tokens, or in the sale of articles therefor or for the same in connection with stamps or cash payments and any use of the same or any of the matters or things done in connection with the same there is no element of gambling or chance, and there is nothing in the same or connected therewith or in the manner in which such coupons,
19 slips, certificates or other tokens are used, issued, paid, redeemed or disposed of, and there is nothing in the method of advertising or conducting business in connection therewith or in the use of the same that is prejudicial to public health, safety, morals or welfare.

VIII.

That divers of said Complainants have delivered to many of their customers with articles sold to them many such coupons, slips, certificates or other tokens, but where the customers have not accumulated a sufficient number of such coupons to have them redeemed in or purchase with them or receive premiums on account of them of articles, as aforesaid, but upon the understanding and expectation that such Complainants should continue to sell them such articles and deliver therewith such coupons, slips, certificates or other tokens so that such several customers should be able to accumulate sufficient numbers thereof to have the same paid or redeemed or to ac-

quire such articles therefor, as aforesaid, and if Complainants are prevented from continuing to sell such articles of merchandise and to deliver such coupons, slips, certificates or other tokens, as aforesaid, in connection therewith, they will be unable to deliver to such purchasers and customers sufficient numbers thereof, as aforesaid and such purchasers and customers will be unable to get the same redeemed or paid or to acquire articles therewith, as aforesaid.

IX.

Complainants further allege that the same facts and all of the facts hereinabove stated are true as to many other merchants doing business in the State of Florida and being in the same position and condition in the premises and having like rights and interests and being subject to like losses, injuries and damages as Complainants, to wit, as Complainants are informed and believe and so allege, about five thousand merchants of the State of Florida.

20 X.

The certificates or tokens commonly called trading stamps and so designated in said Statute are substantially like some of the kinds of coupons or certificates hereinabove mentioned and described. Said trading stamps bear a resemblance in form and appearance to a stamp and when used they are delivered to purchasers by retail merchants with the various articles of goods sold to such purchasers and with such trading stamps such purchasers are entitled to purchase or receive various valuable articles of merchandise according to a list or catalogue upon presentation of the stamps to some person or company that has issued such trading stamps and that redeems the same or sells for the same the articles that may be selected by the purchaser according to the provisions of such list or catalogue.

XI.

That at the last session of the Legislature of the State of Florida, held during the year 1913, a statute was enacted, to wit: Chapter 6421 of the Laws of the State of Florida, entitled "An Act Imposing Licenses and Other Taxes, Providing for the Payment Thereof, and Prescribing Penalties for Doing Business Without a License, or Other Failure to Comply With the Provisions Thereof," which Act was approved by the Governor of said State June 5th, 1913. That said Legislature of the State of Florida did adjourn, to wit: on the 6th day of June, A. D. 1913, and said Statute took effect upon the expiration of Sixty Days from said final adjournment of said session of the Legislature at which it was enacted as aforesaid. That Section 35 of said Statute reads as follows:

"SECTION 35. Merchants, Druggists and Storekeepers, shall pay a license tax as follows:

For the first one thousand ($1,000.00) dollars or fraction of one thousand dollars of stock of merchandise, three ($3.00) dollars in each county and for each place of business, and one and one-half

($1.50) dollars for each additional thousand or fraction
21 thereof; but dealers in merchandise at wholesale only, shall pay a license tax of one and one-half ($1.50) dollars for each one thousand ($1,000.00) dollars of their stock of merchandise. Provided, That the words "stock of merchandise" shall be held to mean the cash value of the merchandise or goods on hand and not the amount of capital stock invested in the business; Provided further, That any merchant keeping sewing machines in stock for sale in the same manner as other merchandise shall not be taxed as a sewing machine agent or dealer.

Provided further, That each and every person, firm or corporation, who shall offer with merchandise bargained or sold in the course of trade any coupon, profit-sharing certificate, or other evidence of indebtedness or liability, redeemable in premiums, shall pay annually a State license tax of Five Hundred ($500.00) dollars and a County license tax of two hundred and fifty ($250.00) dollars in each and every County in which said business is conducted or carried on, and if more than one place of such business shall be operated by any person, firm or corporation, a separate State and County license shall be taken out for each such place; and no person, firm or corporation shall offer with merchandise, bargained or sold as aforesaid, any coupon, profit-sharing certificate or other evidence of indebtedness or liability, redeemable by any other person, firm or corporation than the one offering the same without paying the above license for each other person, firm or corporation who may redeem the same. The license prescribed in this Section shall be in addition to other licenses prescribed by this Act. Any person violating any of the provisions of this Section, whether acting for himself or as the agent of another, shall on conviction thereof be punished by fine not exceeding one thousand ($1,000.00) dollars or by imprisonment in the County jail not exceeding six months.

Mercantile Agencies: Shall pay a license tax of one hundred ($100.00) dollars in each County in which an office is established.

Merchants using trading stamps, shall pay a license tax of two hundred and fifty ($250.00) dollars for each place of business where they use such stamps.

22 Merchant tailors shall pay a license tax of ten ($10.00) dollars for each place of business."

XII.

That in said Section of said Statute of the State of Florida it is enacted, as hereinbefore set forth, that every person, firm or corporation shall pay a state license tax of $500.00 a year and a county license tax of $250.00 a year in each and every county in which said business is conducted or carried on, offering with merchandise bargained or sold any coupon, profit-sharing certificate or other evidence of indebtedness or liability redeemable in premiums and requiring every person, firm or corporation who shall offer with merchandise bargained or sold, as aforesaid, any such coupon, profit-

sharing certificate or other evidence of indebtedness or liability redeemable by any other person, firm or corporation, to pay like license taxes for each other person, firm or corporation who may redeem the same. That by the provisions of said Section of said Statute every person, firm or corporation doing business in Florida and using any coupon, profit-sharing certificate or other evidence of indebtedness or liability, as therein mentioned is required not only to pay such license taxes for itself, but to pay such license taxes for every other person, firm or corporation who may redeem any such coupon, profit-sharing certificate or other evidence of indebtedness or liability, as aforesaid, and is thereby required to pay said license taxes for every one of the great number of persons, firms or corporations whose goods or merchandise are sold or delivered with any coupon, slip, certificate or token or evidence of indebtedness or liability, as aforesaid. That by the provisions of said Statute and said Section thereof said license taxes are most unreasonable, enormous and prohibitive. They not only require the payment of $750.00 per year or the half of that amount for six months of less, by each complainant and all other persons in like circumstances for each place of business of such Complainant or other persons and for each county in which such business is conducted or carried
23 on, but they also require each of said Complainants and every other person in like circumstances to pay like amounts for every person, firm or corporation, any of whose goods or merchandise may be sold or offered by any of said Complainants or any such other person with any such coupon, slip, certificate or token, or evidence of indebtedness or liability therein or attached thereto or delivered therewith. Complainants allege that each of them sells and offers for sale many, to wit, twenty or more of such articles, goods or merchandise manufactured or produced by some other person, firm or corporation, to wit, by twenty or more persons, firms or corporations and with coupons placed in or attached to or delivered with such various articles of goods or merchandise, if redeemable by another different firm or corporation, and that by the provisions of said Statute Complainants and every other person in like situation are required to pay such license taxes for every one of said other firms or corporations, and that in case there are twenty or more of the same, as hereinabove mentioned, each of Complainants and each and every other person in like situation would be required to pay for license tax to the state and for one county or one place of business alone $15,000 per year or one-half of that amount for six months or less time.

Said Statute by the provisions of said Section also requires every person, firm or corporation who may redeem any such coupon, slip, certificate, token or other evidence of indebtedness or liability including every person, firm or corporation manufacturing or producing any goods or merchandise and shipping the same into the State of Florida from any other State of the United States, as aforesaid, and any other person, firm or corporation other than the merchant offering and selling the goods in Florida, as aforesaid, redeeming or who may redeem any such coupon, slip, certificate, token or other

evidence of indebtedness or liability, to pay said amounts of license taxes for, by and through each and every person, firm and corporation in Florida offering or selling any goods and merchandise of any manufacturer, producer or shipper or other person, firm or corporation.

24 That the good and merchandise of each of said manufacturers, producers or shippers, hereinabove mentioned, in this Bill of Complaint as being sold, offered or delivered with such coupons, slips, certificates or tokens, as aforesaid, and the goods and merchandise of many other manufacturers, producers and shippers of goods and merchandise shipped from other states of the United States into the State of Florida, are received, brought, kept in stock and delivered by many merchants in the State of Florida, to-wit, by several thousands of merchants in the State of Florida, and said Statute requires each of said manufacturers, producers or shippers to pay by, for and through each such merchant, person, firm or corporation so selling or offering for sale any of such goods and merchandise of any and every such manufacturer, producer or shipper the sum of $750.00 per year for each place of business of such person, firm or corporation in Florida and $250.00 for each additional county in which such business is conducted or carried on, which would amount, if payment was so made for only 100 of such persons, firms or corporations in Florida, to $75,000 per annum, and if payment were made for 1,000 of such persons, firms or corporations in Florida, for one place of business to $750,000, and so on as to any number to be paid by and for each and every of such manufacturers, producers or shippers.

XIII.

That such coupons, slips, certificates or tokens are enclosed in packages of tobacco products as hereinbefore mentioned which packages are delivered unbroken to complainants' customers of goods of various manufacturers and producers of tobacco products hereinbefore mentioned and other such manufacturers and producers; and said coupons, slips, certificates and tokens so contained in such packages and so delivered are authorized and rendered lawful by section 3394 of the revised statutes of the United States as amended by the tenth section of the Act of July 24th 1897 as further amended by the second section of the Act of July 1st, 1902, of the Statutes of the United States.

XIV.

25 Complainants and each of them allege and charge that said provisions of the Statute of the State of Florida and all and every of them concerning the offering with merchandise bargained or sold any coupons, profit-sharing certificates or other evidence of indebtedness or liability or slip token or trading stamp contained in said Section 35 of said Statute and all provisions and enactments thereof for the prosecution, conviction and punishment or any of them of any person therefor or concerning same are con-

trary to and in violation of the Constitution of the United States of America and are unconstitutional, null and void upon and because of the facts and grounds in this Bill of Complaint hereinbefore stated and also the facts and grounds hereinafter stated to-wit:

(1.) That said Statute in the said enactments and provisions thereof undertakes and attempts to and if it be permitted to be enforced or given effect will regulate, hinder, restrain, prohibit and destroy interstate commerce between the several states of the United States, to-wit, between states of the United States other than the State of Florida and the said State of Florida contrary to and in violation of the Commerce clause of the Constitution of the United States, to-wit, the third clause of section eight of article one of the Constitution of the United States of America.

(2.) That said Statute in the enactments and provisions thereof undertakes and attempts to, and if it be permitted to be enforced and given effect will abridge the privileges and immunities of Complainants and other citizens of the United States, and will deprive Complainants and other Citizens of the United States of Liberty and property without due process of law, and will deny to Complainants and to other citizens of the United States within the jurisdiction of said State, the equal protection of the laws, contrary to and in violation of the Fourteenth Amendment, to-wit,
26 Article XIV of the Constitution of the United States of America, and more particularly said Statute and the enactments and provisions thereof are more especially contrary to, and in violation of, said Fourteenth Amendment to the Constitution of the United States in the following particulars:

(A) That the classification made or attempted in said Statute upon which said enactments and provisions for the payment of said license taxes herein complained of are made or based, is arbitrary and discriminating, and not based upon any just distinction between merchants engaged in similar lines of business and in competition therein.

(B) Said Statute and said provisions and enactments thereof attempt to impose upon merchants who advertise their business in a certain manner, or who offer certain premiums, discounts, profit sharing certificates, or like inducements to their customers to trade with them, or to buy goods or merchandise which they produce, or sell, said unreasonable, exhorbitant, discriminating and prohibitory license taxes not imposing the same upon other merchants in the same or similar lines of business, who do not use said forms of advertising, or offer premiums, discounts, profit-sharing certificates, or like inducements to their customers to trade with them, or to buy goods or merchandise which they produce or sell, but who use other forms of advertising or make other inducements to their customers, and said license taxes are not based upon any substantial or actual differences in such business or occupations, or actual or substantial grounds of classifications in the premises.

(C) That the said annual and semi-annual license taxes complained of, and imposed by said Statute, are not taxes upon the

businesses or occupations of said Complainants and others similarly situated, but are unlawful attempts to levy annual or semi-annual license taxes upon mere incidents of said businesses, and are unreasonable and illegal interferences with the method and manner of conducting the same.

27 (D) That said Statute in said Section thereof undertakes and attempts to impose upon and require of each of complainants and of every person similarly situated, that each such person, firm or corporation offering with merchandise bargained or sold, any coupon, profit-sharing certificate, or other evidence of indebtedness or liability, redeemable by any other person, firm or corporation than the one offering the same, to pay the amounts of license taxes hereinbefore mentioned, for each other person, firm or corporation who may redeem the same, and it is thereby attempted to make one person, firm or corporation pay the license taxes of other persons, firms or corporations, and to levy upon, seize, take and dispose of the property of each of said complainants, and of every other person so situated as provided in said Section 35 of said Statute, and also in Section 59 of said Statute and elsewhere in said Statutes, and to fine, or imprison said complainants or their agents, and every other person and the agents of every other person similarly situated, in order to compel them to pay such license taxes of or for each such other person, firm or corporation.

(E) That said Statute by its said provisions and said license taxes hereinbefore complained of, deprives complainants and each of them, and every other person, firm or corporation in like situation, of their privileges, immunities and liberty and property, without due process of law, in as much as they or any of them cannot bestow a gift or give a premium, or a share of the profits of the business of each or any of them, by reason of the said provisions of the said Statute hereinbefore set forth, without paying said enormous, excessive and prohibitory license tax, whereby they are hindered, restrained and prevented from so doing, exercising, having and enjoying privileges, immunities, liberty and property, guaranteed and secured to them and each of them by said Article XIV of the Constitution of the United States of America.

(F) That said annual and semi-annual license taxes are unreasonable, arbitrary, oppressive, discriminatory and prohibitory in that they are far in excess of the amounts of taxes or licenses

28 fixed or imposed by said Statute of said State upon any other legitimate business or any other methods of advertising or inducing custom, or inducing persons to buy goods, wares or merchandise, and because it will prevent complainants and each of them, and persons, firms or corporations in like situation from carrying on or doing their legitimate businesses as aforesaid, and from selling any article of goods, wares or merchandise with such coupons, slips, profit-sharing certificates, or other evidences of indebtedness, or other tokens as aforesaid, the amounts of said license taxes being so great that they would take away and destroy all profit in so doing any such business or making any sales, and in many instances will cause actual loss of money and capital to and of complainants and each of them and other persons so doing.

(G) Said annual or semi-annual license taxes are prohibitory in that they impose financial obligations and burdens so great, and requiring the payment of such sums of money by and from complainants and all other persons in like situation for such incidents of their respective businesses, that said provisions for said license taxes are not productive of revenue, being in excess of the profits from said features of said businesses upon which they are imposed, and will prohibit and prevent complainants and all persons in like situation from doing the same.

(H) That said annual and semi-annual license taxes are so large, exhorbitant and excessive, that, while under the guise of a revenue measure, they will produce no revenue, and are in fact a prohibitory measure.

(I) That said annual or semi-annual license taxes, though under the guise of a revenue measure and taxation, are in fact not such, and are not imposed for the purpose of revenue or taxation, but are intended for the purposes of prohibiting and preventing the doing of business and the enjoying and disposing of property
29 and the exercising of the rights of property and of liberty, and of having the equal protection of the law to which complainants and all other persons in like situation are entitled and in which they are protected by said Article XIV of said Constitution of the United States of America.

(J) That said Statute in its said provisions is partial, unreasonable, oppressive, unequal, in restraint of trade, and prohibitory of lawful acts done in the conduct of lawful business, and is therefore violative of the liberty and rights of complainants and each of them and all other persons in like situation, guaranteed to them by the provisions of said Article XIV of the said Constitution.

(K) That the said methods and acts of complainants and each of them, and of all other persons in like situation, and of said manufacturers, shippers and producers hereinbefore mentioned and as hereinbefore described, in offering for sale and selling or delivering goods, wares or merchandise with coupons, slips, certificates or other evidences of indebtedness or liability, or like tokens, and in redeeming or paying the same or giving or selling articles in exchange therefor or for the same, and in all the other matters and things hereinbefore mentioned in the premises, in no way so affect the public health, safety, convenience, comfort, morals or welfare, as to be subject to police control or regulation by said State or the Legislature thereof, and the said provisions of said Statute and the said imposition of said license taxes are in no way a legitimate or lawful exercise of any police power of said State or of the Legislature thereof.

(L) That the penalties, fines and imprisonments provided in said Section of said Statute for the enforcement thereof, are so onerous, drastic and excessive and numerous, as to deter complainants from going on doing business in the premises as they have heretofore done, with reference to such coupons, slips, certificates, evidences of indebtedness and tokens as aforesaid, and testing the validity of said Statute and the provisions thereof in a court of law.

30 (M) That the fines and penalties imposed by said provisions of said Statute complained of, for the violation thereof, are so excessive and exhorbitant as to be confiscatory of the property of said complainants and each of them, were they or either of them to continue to carry on their businesses and to offer, sell or dispose of goods or merchandise with coupons, slips, certificates, evidences of indebtedness and such tokens, as aforesaid, for the purpose of testing the validity of the same in a court of law and should said law be held to be valid.

(N) That by said Statute and in Section 59 thereof, it is provided and enacted as to persons, firms or corporations generally that shall carry on or conduct any business or profession for which a license is required, without first obtaining such license, that such person, firm or corporation shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than double the amount required for said license, but in said Section 35 it is provided and enacted that for failure to pay any of the license taxes hereinbefore mentioned and complained of, any person, whether acting for himself or as the agent for another, may be imprisoned in the County jail, not exceeding six months.

XV.

Complainants and each of them further allege that said provisions of said Statute of the State of Florida, hereinbefore mentioned and complained of, are unconstitutional and void, being contrary to and in violation of the provisions of clause one (1), of section ten (10) of Article one (1) of the Constitution of the United States, which provides that no state shall pass any law impairing the obligation of contracts, and said Statute impairs the obligation of contracts made with persons purchasing goods or merchandise with such coupons, slips, certificates, evidences of indebtedness or liability or like tokens, as mentioned in paragraph Eight of this Bill of Complaint.

31 ## XVI.

That said provisions for or concerning said license taxes of said Section 35 of said Statute of Florida, hereinbefore mentioned and complained of are unconstitutional and void in that they conflict with and attempt to nullify Section 3394 of the Revised Statutes of United States as amended by the 10th section of the Act of July 24th, 1897, further amended by the 2nd section of the Act of July 1st, 1902, which said Statute of the United States as amended, as aforesaid, was enacted as a means of carrying into execution the powers invested in the government of the United States in Section 8 of Article 1 of the Constitution of the United States and contrary to and in violation of the second clause of Article 6 of the Constitution of the United States, which provides and declares that the Constitution and laws of the United States which shall be made in pursuance thereof shall be the supreme law of the land; and the Judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary, notwithstanding.

XVII.

That said provisions, requirements, license taxes, impositions, fines and penalties of said Statute of the State of Florida, hereinbefore mentioned and complained of deprives complainants and each of them, and every person in like situation of rights of liberty and of having managing and disposing of property and of doing business such as belong to every person in every free country and such as belong to Complainants, and each of them, and every person in like situation, as citizens of or residing in the United States or the State of Florida, without being specifically mentioned in any constitution, by natural and inherent rights, or such rights as are recognized and assumed to exist without being specifically mentioned in the Constitution of the United States and the Constitution of the State of Florida and such rights as are mentioned or indicated by the Declaration of Independence of the United States and the Magna
32 Charta, and which are a part of the law of the land, and which are and will be protected by or enforced by the Courts.

XVIII.

That upon all the facts hereinbefore stated upon all the grounds hereinbefore stated, said provisions of said Statute of the State of Florida and all said requirements thereof for the payment of license taxes hereinabove mentioned and complained of are contrary to and in violation of the Constitution of the State of Florida and more particularly of Section 12 of the Declaration of Rights of said Constitution of the State of Florida which provides that no person shall be deprived of life, liberty or property without due process of law, nor shall property be taken without just compensation, and also of Section 1 of said Declaration of Rights which declares "All men are equal before the law, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing happiness and obtaining safety."

XIX.

Complainants allege that they and each of them have paid all license taxes due or payable by them, respectively, to the State of Florida, or any county thereof for doing and carrying on, or entitling them to do or carry on, the several businesses of each of them, other than the said license taxes, concerning any coupon, profit-sharing certificate or other evidence of indebtedness or liability mentioned in Section 35 of said Statute of Florida, and hereinabove mentioned and complained of.

XX.

Complainants allege that as to each of them the amount of said license taxes hereinabove mentioned and complained of required by said Section 35 of said State of Florida to be paid by each of
33 Complainants, is at the present time and aggregates more than $3,000.00, as to each of said Complainants, and also the damage and injury of the property, trade and business of each of said

Complainants in the premises, by reason of the provisions of said Section 35 of said Statute of the State of Florida, hereinabove mentioned and complained of will amount to more than $3,000.00 and that the matter in controversy in this suit as to each of said Complainants exceeds the sum or value of $3,000.00 exclusive of interest and costs. That this suit involves Federal questions, as herein stated, and the matters in controversy arise under the Constitution and laws of the United States as herein stated.

XXI.

Complainants further allege that under and by the Statutes of the State of Florida, and more particularly under and by section fifty-nine of said Statute covering licenses and other taxes, approved June 5th, 1913, and the provisions of which are hereinbefore complained of, the tax collector of each county is authorized and empowered to enforce the payment of all license taxes by the seizure and sale of property. That the comptroller of the State of Florida has issued statements and communications to divers of the tax collectors hereinbefore named and to the tax collectors of the State of Florida generally notifying and instructing them that there is now due and payable and collectable one half of each of said sums of Five Hundred Dollars ($500.00) for state license tax and one half of each of said sums of Two Hundred and Fifty ($250.00) Dollars for county license taxes for the time between the going into effect of said Statute to wit, August 6th, 1913, and the first day of October 1913, and that upon the first day of October 1913, there will be payable for the year from October 1st 1913, to October 1st, 1914, the additional sum of Five Hundred ($500.00) Dollars for every such state license tax and Two Hundred and Fifty ($250.00) Dollars for every such license tax for each and every county as provided and mentioned in said
34 section thirty-five of said statute and in this Bill of Complaint mentioned and set forth; and divers of the tax collectors of said state have issued statements, notices and circulars notifying complainants and other persons in like situation that said license taxes were and are due and payable as aforesaid and must be immediately paid to said tax collectors. That said tax collectors are threatening to and will immediately proceed to collect said license taxes from each of complainants and from all other persons in like situation and in order so to do will seize and sell the property of each of complainants and of every person in like situation, and will enter upon the stores and warehouses of each of complainants and of such other persons and will interrupt and interfere with their businesses and seize their stocks of wares, goods and merchandise, and will cause each of them loss of business, trade and customers, and will sell such property at forced sales and at sacrifices, and will greatly injure and damage the property and the business of each of said complainants, and of such other persons, and will not only cause loss and damage to each of them by reason of seizing and taking their property but will also on account of the peculiar character and uses of the property, to wit, their stocks of merchandise wherewith and whereby they exer-

cise, carry on and maintain their businesses and occupations, and the injury to their businesses and occupations and credit and loss of customers and because of the repeated and numerous seizures and sales of such property of complainants and each of them that will be made by such defendant tax collectors to collect such license taxes from them for the state and county from each place of business and in each and every county in which said business is conducted or carried on, and also for such license taxes from each and every other person, firm or corporation by whom any such coupon, certificate or other evidence of indebtedness or liability offered or sold in connection with any merchandise as hereinbefore stated may be redeemable, and such a multiplicity of litigation would be inflicted on and caused to each of said complainants and other persons by such pro-
35 ceedings, and the businesses and occupations aforesaid of each of said complainants and such other persons would be so interrupted, damaged and destroyed, and such tremendous amounts of moneys, costs and expenses would be inflicted upon them or collected out of them or their property seized and sold therefor by said defendant tax collectors as aforesaid, and the damages resulting would be so difficult or impossible of ascertainment and computation, that each of said complainants and such other persons have and would have no adequate remedy at law in the premises and can only have suitable or adequate relief in a court of equity.

XXII.

That said defendants State Attorneys, County Solicitors, and Prosecuting Attorneys for the several circuits and counties hereinbefore mentioned, are respectively authorized and empowered by the laws of said State of Florida to prosecute in the several courts of said State alleged violations of the criminal laws of said State and are so authorized to prosecute any person for any violation of any of said provisions of said section thirty-five of said Statute of the State of Florida, and divers of said defendant prosecuting officers have been and are threatening to prosecute divers of complainants therefor, and such prosecutions will affect the property and property rights of each of said complainants to wit, will prevent them from enjoying, using or disposing of their property or transacting their business as aforesaid, and will greatly lessen the value of their property, and will prevent them from disposing of much property now in their possession as aforesaid, and will prevent them from acquiring and disposing of like property in the future, and will prevent them from carrying out their contracts or representations in connection with property already sold or disposed of as aforesaid; and said threatened actions and proceedings of each of said prosecuting officers and each of said tax collectors will have all of said consequences and effects; and each of said complainants and persons in like situation will be frequently and
36 constantly arrested, restrained and deprived of their liberty and prosecuted in the courts of said State by or under the authority and action of said defendant prosecuting officers herein-

before named, and that each of said complainants and every person in like situation has no adequate action or remedy in the premises at law and can only obtain suitable or adequate relief in a court of equity. That such seizures, sales, damage and injuries of and to the property and businesses of each of said complainants and such other persons will be done and inflicted and such arrests, deprivations of liberty and prosecutions will be made, done and instituted and proceeded with before complainants could give notice and apply for and obtain an interlocutory injunction in this Honorable Court by getting such application heard and determined by three judges in accordance with Section 266 of the Statute of the United States entitled "An Act to codify, revise, and amend the laws relating to the Judiciary generally called the Judicial Code, and that irreparable loss and damage in the premises and in each of the matters, ways and proceedings hereinbefore mentioned will result to each of said complainants unless temporary restraining order is granted by this Honorable Court to remain in force until hearing and determination of such an application for interlocutory injunction upon notice may be had.

That notice of applying for such restraining order is not required or contemplated by the laws of the United States, and could not be given in time for relief on account of the great numbers and scattered locations of defendants, and any such notice would hasten the said acts, wrongs and injuries and to a great extent defeat and prevent said relief prayed in this bill of complaint, and to which complainants are entitled as aforesaid.

XXIII

For as much, therefore, as all of said matters and things herein complained of are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orators
37 in the premises, and inasmuch as Complainants and each of them have no adequate remedy in the premises by the strict rules of common law, and can obtain relief only in a Court of equity where matters and things of the kind and character heremabove stated are properly cognizable and relievable, and to the end that they and each of them may have proper, suitable and adequate relief which they and each of them can obtain only in a Court of equity, in and to the end, therefore, that the said defendants and that each of them may, if they can, show why your orators should not have the relief herein and hereby prayed and may full, true, direct and perfect answer make to all and singular the matters herein set forth as if particularly interrogated thereunto but not under oath, their oaths to such answer or answers being hereby expressly waived: Your orators pray as follows:

1. That each of said defendant Tax Collectors hereinabove named, as such Tax Collector, and each of said defendant State's Attorney, hereinabove named, as such State Attorney, and each of said defendant County Solicitors, hereinbefore named, as such County Solicitor, and each of said defendant Prosecuting Attorneys,

hereinbefore named, as such Prosecuting Attorney, and all persons acting by, through or under them or by their authority or the authority of any of them, and all other persons who may act in any of said offices or in place or stead of any of said defendants or under or by virtue of any of said provisions of said Section 35 of said Statute- of the State of Florida, herein complained of, be restrained and enjoined by the restraining order of this Honorable Court, or that may be granted by Your Honor, and by an interlocutory injunction out of and from this Honorable Court or injunction during the pendency of this suit and by permanent and perpetual injunction from and issuing out of this Honorable Court, and that Complainants and each of them be granted and have any and all proper writs of injunction, accordingly, restraining and enjoining them and each and every of them from collecting or
38 attempting to collect from said Complainants or any of them, or from any person, firm or corporation similarly situated said license taxes or any of them, or any part thereof, mentioned or provided for in Section 35 in said Statute- of the State of Florida for or because of or on account of offering, giving, selling or delivering with merchandise or using any coupon, slip, certificate or other evidence of indebtedness or liability or like device or token, and from levying on, seizing, selling or interfering with any property of said Complainants or any of them or any other person similarly situated, for the purpose of collecting said license taxes or any of them, or any part thereof and from causing, beginning or instituting any prosecution, information, indictment, arrest, imprisonment or any other criminal proceeding or carrying on or prosecuting any *such* that may be instituted or begun, after the filing of this Bill of Complaint, or the making or issuance of any such restraining order or injunction herein or any indictment or information found or filed thereafter for the purpose of collecting or causing to be paid said license taxes or any of them, or any part thereof, or of punishing, fining or imprisoning or causing the same to be done of said Complainants, or of any of them, or of any other person, firm or corporation similarly situated and from causing any of said things to be done and from taking any other action or in any other manner interfering with the Complainants or any of them, or any other person, firm or corporation similarly situated, or their respective businesses, by reason or because of said license taxes and said provisions of said Statute hereinabove mentioned. That Complainants may have any proper order to the Defendants to show cause herein why an interlocutory injunction or an injunction during the pendency of this suit should not issue as prayed for herein and all other suitable or proper orders in the premises and in the prosecution of this suit.

2. That all the aforesaid enactments and provisions and every of them of said Section 35 of said Statute providing for or requiring the payment of said license taxes, hereinabove mentioned
39 and complained of, to-wit, all said license taxes imposed provided for or required to be paid by said Section 35 of said Statute for offering with merchandise bargained or sold in the course

of trade any coupon, profit-sharing certificate, or other evidence of indebtedness or liability, redeemable in premiums, with merchandise, bargained or sold as aforesaid, or any coupon, profit-sharing certificate or other evidence of indebtedness or liability, redeemable by any other person, firm or corporation than the one offering the same, or for using any like device, slip or token, including trading stamps, and all the enactments and provisions thereof providing or imposing a fine or imprisonment for any violation thereof, may be declared and deceed to be unconstitutional, illegal and void and that a perpetual injunction and writ or writs of injunction be issued restraining and enjoining the enforcement thereof, as hereinbefore prayed.

3. That Complainants and each of them may have such further and other relief in the premises as to equity may pertain, and may to the Court seem meet.

4. That a writ or writs of subpœna may issue to the said Defendants and each of them requiring them and each of them to appear upon a day or days therein to be specified and to answer this Bill of Complaint fully and truthfully, but not on oath, oath being hereby expressly waived, and that they and each of them abide by and perform what the Court shall decree in the premises.

CHARLES M. COOPER,
CHARLES P. COOPER,
JAMES J. G. COOPER,
Counsel and Solicitors for Complainants.

STATE OF FLORIDA,
County of Duval ss:

Personally appeared before me, a Notary Public for the State of Florida, Simon Benjamin, who being first duly sworn, deposes and says, that he is the General Manager of J. S. Pinkussohn Cigar Company, one of the Complainants in the foregoing Bill of Complaint, and he makes this affidavit for and on behalf of said Complainants; that he has heard read said Bill of Complaint, and knows the contents thereof, and that the same is true, except as to the matters therein stated to be set forth upon information and belief, and therein he believes it to be true.

(Signed) SIMON BENJAMIN.

Sworn to and subscribed before me this 21st day of August, A. D. 1913.

[SEAL.] M. M. WHITE,
Notary Public for the State of Florida at Large.

My Commission expires the 11th day of June, A. D. 1917.

STATE OF FLORIDA,
County of Duval, ss:

Personally appeared before me, a Notary Public for the State of Florida, James W. Davidson, who being first duly sworn, deposes and says, that he is the Secretary and Treasurer of The Forsyth Company one of the Complainants in the foregoing Bill of Com-

plaint, and he makes this affidavit for and on behalf of said Complainant; that he has heard read said Bill of Complaint, and knows the contents thereof, and that the same is true, except as to the matters therein stated to be set forth upon information and belief, and therein he believes it to be true.

(Signed) JAMES W. DAVIDSON.

Sworn to and subscribed before me this 21st day of August, A. D. 1913.

[SEAL.] M. M. WHITE,
Notary Public for the State of Florida at Large.

My Commission expires the 11th day of June, A. D. 1917.

41 STATE OF FLORIDA,
County of Duval, ss:

Personally appeared before me, a Notary Public for the State of Florida, Charles M. Lewis, who being first duly sworn, deposes and says, that he is the President of Van Deman and Lewis Company, one of the Complainants in the foregoing Bill of Complaint, and he makes this affidavit for and on behalf of said Complainants; that he has heard read said Bill of Complaint, and knows the contents thereof, and that the same is true, except as to the matters therein stated to be set forth upon information and belief, and therein he believes it to be true.

(Signed) CHARLES M. LEWIS.

Sworn to and subscribed before me this 21st day of August, A. D. 1913.

[SEAL.] M. M. WHITE,
Notary Public for the State of Florida at Large.

My Commission expires the 11th day of June, A. D. 1917.

(Endorsed:) Bill of Complaint. Filed August 21st, 1913, E. O. Locke, Clerk.

42 In the District Court of the United States for the Southern District of Florida. In Chancery.

VAN DEMAN AND LEWIS COMPANY, a Corporation Organized and Existing under the Laws of the State of Florida; The Harkisheimer Company, a Corporation Organized and Existing under the Laws of the State of Florida; J. S. Pinkussohn Cigar Company, a Corporation Organized and Existing under the Laws of the State of South Carolina; The Forsyth Company, a Corporation Organized and Existing under the Laws of the State of Florida; Joseph R. Mickler, Eli Witt, Complainants,

vs.

JOHN W. RAST, Tax Collector for Duval County, State of Florida; William A. Hallows, Jr., State Attorney for Fourth Judicial Circuit, State of Florida; L. D. Howell, County Solicitor for Duval

County, State of Florida; R. B. McLendon, Tax Collector for Dade County, State of Florida; John C. Gramling, State Attorney for Eleventh Judicial Circuit, State of Florida; James T. Sanders, County Solicitor for Dade County, State of Florida; William L. Colbert, Tax Collector for Marion County, State of Florida; John L. Branch, Tax Collector for Hillsborough County, State of Florida; George P. Raney, State Attorney for Sixth Judicial Circuit, State of Florida; William H. Jackson, County Solicitor for Hillsborough County, State of Florida; E. B. McMullen, Tax Collector for Pinellas County, State of Florida; A. M. McMullen, Prosecuting Attorney for Pinellas County, State of Florida; J. A. McLeod, Tax Collector for Suwanee County, State of Florida; C. A. Hardee, State Attorney for Third Judicial Circuit, State of Florida; Charles E. Allen, Tax Collector for Citrus County, State of Florida; George W. Scofield, State Attorney for Fifth Judicial Circuit, State of Florida; D. P. Smith, Tax Collector for Volusia County, State of Florida; C. D. Landis, State Attorney for Seventh Judicial Circuit, State of Florida; R. P. Hamlin, County Solicitor for Volusia County, State of Florida; B. M. Dowling, Tax Collector for Bradford County, State of Florida; A. V. Long, State Attorney for Eighth Judicial Circuit, State of Florida; T. H. Easterling, Tax Collector for Manatee County, State of Florida; J. B. Singletary, State Attorney for Tenth Judicial Circuit, State of Florida; J. L. Collier, Prosecuting Attorney for Manatee County, State of Florida; T. A. Sweeting, Tax Collector for Monroe County, State of Florida; E. P. Roberts, County Solicitor for Monroe County, State of Florida; W. E. Martin, Tax Col-
43 lector for Orange County, State of Florida; L. G. Starbuck, County Solicitor for Orange County, State of Florida; C. L.Bandy, Tax Collector for Osceola County, State of Florida; H. B. Geiger, Prosecuting Attorney for Osceola County, State of Florida; F. Marion Lanier, Tax Collector for Polk County, State of Florida; R. B. Huffaker, Prosecuting Attorney for Polk County, State of Florida; T. J. Campbell, Tax Collector for Palm Beach County, State of Florida; Gordan R. Broom, Prosecuting Attorney for Palm Beach County, State of Florida; A. M. Driggors, Tax Collector for Baker County, State of Florida; Philip H. Wright, Tax Collector for Brevard County, State of Florida; Arch J. Murrhee, Tax Collector for Clay County, State of Florida; W. M. Dowling, Tax Collector for Columbia County, State of Florida; Cyril Baldwin, Tax Collector for De Soto County, State of Florida; S. J. Hewitt, Tax Collector for Hamilton County, State of Florida; John C. Law, Tax Collector for Hernando County, State of Florida; R. L. Nutt, Tax Collector for Lake County, State of Florida; Henry A. Blake, Tax Collector for Lee County, State of Florida; Samuel J. Ellison, Tax Collector for Madison County, State of Florida; J. D. Ogilvie, Tax Collector for Nassau County, State of Florida; William L. Mobley, Tax Collector for Pasco County, State of Florida; R. J. Hancock, Tax Collector for Putnam County, State of Florida; H. H. Floyd, Tax Collector for St. Johns County, State of Florida; Frank M. Tyler, Tax Collector

for St. Lucie County, State of Florida; John B. Jinkins, Tax Collector for Seminole County, State of Florida; J. H. Hughes, Tax Collector for Sumter County, State of Florida; J. S. Roberts, Tax Collector for Escambia County, State of Florida; John P. Stokes, State Attorney for First Judicial Circuit, State of Florida; Scott M. Loftin, County Solicitor for Escambia County, State of Florida; C. S. Curtis, Tax Collector for Gadsden County, State of Florida; George W. Walker, State Attorney for Second Judicial Circuit, State of Florida; J. Baxter Campbell, Prosecuting Attorney for Gadsden County, State of Florida; Hinton Folsom, Tax Collector for Jackson County, State of Florida; R. H. Buford, State Attorney for Ninth Judicial Circuit, State of Florida; H. B. Tiller, Tax Collector for Washington County, State of Florida; A. D. Carmichael, Prosecuting Attorney for Washington County, State of Florida; G. W. Miller, Tax Collector for Alachua County, State of Florida; J. B. Blackwell, Tax Collector for Bay County, State of Florida; J. T. Grayson, Tax Collector for Calhoun County, State of Florida; G. W. Hinsey, Tax Collector for Franklin County, State of Florida; J. W. Johnson, Tax Collector for Holmes County, State of Florida; Edwin W. Tucker, Tax Collector for Jefferson County, State of Florida; S. R. Lanfston, Tax Collector for La Fayette County, State of Florida; Walter A. Demilly, Tax Collector for Leon County, State of Florida; John L. Carter, Tax Collector for Levy County, State of Florida; G. Morgan Deason, Tax Collector for Liberty County, State of Florida; John W. Helms, Tax Collector for Santa Rosa County, State of Florida; Frank M. Tyler, Tax Collector for St. Lucie County, State of Florida; Alton C. Hendry, Tax Collector for Taylor County, State of Florida; W. G. Durance, Tax Collector for Wakulla County, State of Florida; James A. McLean, Tax Collector for Walton County, State of Florida, Defendants.

44 The Complainants in the above entitled cause apply to the Judge of said Court and move for an interlocutory injunction during the pendency of this suit, in accordance with the prayers of the Bill of Complaint herein, to-wit, that each of said defendant Tax Collectors, hereinabove named, as such Tax Collectors, and each of said defendant State's Attorneys, hereinabove named, as such State Attorney, and each of said defendant County Solicitors, hereinabove named as such County Solicitors, and each of said defendant prosecuting Attorneys, hereinabove named, as such Prosecuting Attorney, and all other persons acting by through or under them or by their authority or the authority of any of them, and all other persons who may act in any of said offices or in place or stead of any of said defendants or under or by virtue of any of said provisions of said Section 35 of said Statute of the State of Florida, herein complained of, be restrained and enjoined by the restraining order of this Honorable Court, or that may be granted by Your Honor, and by an interlocutory injunction out of and from this Honorable Court or injunction during pendency of this suit from collecting or attempting to collect from said Complainants or any of them, or from any

person, firm or corporation similarly situated said license taxes or any of them, or any part thereof, mentioned or provided for in Section 35 in said Statute of the State of Florida, for or because of or on account of offering, giving, selling, or delivering with merchandise or using any coupon, clip, certificate or other evidence of indebtedness or liability or like device or token, and from levying on, seizing, selling, interferring with any property of said Complainants or any of them or any other person similarly situated, for the purpose of collecting said license taxes, or any of them, or any part thereof and from causing, beginning or instituting any prosecution, information, indictment, arrest, imprisonment or other criminal proceeding or carrying on or prosecuting any such that may be instituted or begun, after the filing of the Bill of Complaint herein, or the making or issuance of this restraining order or interlocutory injunction herein, or on any indictment or information found
45 or filed thereafter for the purpose of collecting or causing to be paid said license taxes or any of them or any part thereof, or of punishing, fining or imprisoning or causing the same to be done, of said complainants, or any of them, or of any other person, firm or corporation similarly situated, and from causing any of said things to be done and from taking any other action or in any other manner interferring with the complainants or any of them, or any other person, firm or corporation similarly situated, or in their respective businesses because of said license taxes and said provisions of said Statute hereinbefore mentioned, to-wit, Section 35, Chapter 6421, of the Laws of the State of Florida; and that until the hearing and determination of said application for an interlocutory injunction, that the Judge of said Court grant such temporary restraining order as prayed in the Bill of Complaint, and similar in substance to the interlocutory injunction herein applied for.

CHARLES M. COOPER,
CHARLES P. COOPER,
J. J. G. COOPER,
Counsel & Solicitors for Complainants.

(Endorsed:) Application for Interlocutory Injunction. Filed Aug. 21st. 1913, E. O. Locke, Clerk.

46 In the District Court of the United States for the Southern District of Florida. In Chancery.

VAN DEMAN AND LEWIS COMPANY, a Corporation Organized and Existing under the Laws of the State of Florida; The Harkisheimer Company, a Corporation Organized and Existing under the Laws of the State of Florida; J. S. Pinkussohn Cigar Company, a Corporation Organized and Existing under the Laws of the State of South Carolina; The Forsyth Company, a Corporation Organized and Existing under the Laws of the State of Florida; Joseph R. Mickler, Eli Witt, Complainants,

vs.

JOHN W. RAST, Tax Collector for Duval County, State of Florida; William A. Hallows, Jr., State Attorney for Fourth Judicial Circuit, State of Florida; L. D. Howell, County Solicitor for Duval County, State of Florida; R. B. McLendon, Tax Collector for Dade County, State of Florida; John C. Gramling, State Attorney for Eleventh Judicial Circuit, State of Florida; James T. Sanders, County Solicitor for Dade County, State of Florida; William L. Colbert, Tax Collector for Marion County, State of Florida; John L. Branch, Tax Collector for Hillsborough County, State of Florida; George P. Raney, State Attorney for Sixth Judicial Circuit, State of Florida; William H. Jackson, County Solicitor for Hillsborough County, State of Florida; E. B. McMullen, Tax Collector for Pinellas County, State of Florida; A. M. McMullen, Prosecuting Attorney for Pinellas County, State of Florida; J. A. McLeod, Tax Collector for Suwanee County, State of Florida; C. A. Hardee, State Attorney for Third Judicial Circuit, State of Florida; Charles E. Allen, Tax Collector for Citrus County, State of Florida; George W. Scofield, State Attorney for Fifth Judicial Circuit, State of Florida; D. P. Smith, Tax Collector for Volusia County, State of Florida; C. D. Landis, State Attorney for Seventh Judicial Circuit, State of Florida; R. P. Hamlin, County Solicitor for Volusia County, State of Florida; B. M. Dowling, Tax Collector for Bradford County, State of Florida; A. V. Long, State Attorney for Eighth Judicial Circuit, State of Florida; T. H. Easterling, Tax Collector for Manatee County, State of Florida; J. B. Singletary, State Attorney for Tenth Judicial Circuit, State of Florida; J. L. Collier, Prosecuting Attorney for Manatee County, State of Florida; T. A. Sweeting, Tax Collector for Monroe County, State of Florida; E. P. Roberts, County Solicitor for Monroe County, State of Florida; W. E. Martin, Tax Col-

47 lector for Orange County, State of Florida; L. G. Starbuck, County Solicitor for Orange County, State of Florida; C. L. Bandy, Tax Collector for Osceola County, State of Florida; H. B. Geiger, Prosecuting Attorney for Osceola County, State of Florida; F. Marion Lanier, Tax Collector for Polk County, State of Florida; R. B. Huffaker, Prosecuting Attorney for Polk County, State of Florida; T. J. Campbell, Tax Collector for Palm Beach County, State of Florida; Gordan R. Broom, Prosecuting Attor-

ney for Palm Beach County, State of Florida; A. M. Driggors, Tax Collector for Baker County, State of Florida; Philip H. Wright, Tax Collector for Brevard County, State of Florida; Arch J. Murrhee, Tax Collector for Clay County, State of Florida; W. M. Dowling, Tax Collector for Columbia County, State of Florida; Cyril Baldwin, Tax Collector for De Soto County, State of Florida; S. J. Hewitt, Tax Collector for Hamilton County, State of Florida; John C. Law, Tax Collector for Hernando County, State of Florida; R. L. Nutt, Tax Collector for Lake County, State of Florida; Henry A. Blake, Tax Collector for Lee County, State of Florida; Samuel J. Ellison, Tax Collector for Madison County, State of Florida; J. D. Ogilvie, Tax Collector for Nassau County, State of Florida; William L. Mobley, Tax Collector for Pasco County, State of Florida; R. J. Hancock, Tax Collector for Putnam County, State of Florida; H. H. Floyd, Tax Collector for St. Johns County, State of Florida; Frank M. Tyler, Tax Collector for St. Lucie County, State of Florida; John B. Jinkins, Tax Collector for Seminole County, State of Florida; J. H. Hughes, Tax Collector for Sumter County, State of Florida; J. S. Roberts, Tax Collector for Escambia County, State of Florida; John P. Stokes, State Attorney for First Judicial Circuit, State of Florida; Scott M. Loftin, County Solicitor for Escambia County, State of Florida; C. S. Curtis, Tax Collector for Gadsden County, State of Florida; George W. Walker, State Attorney for Second Judicial Circuit, State of Florida; J. Baxter Campbell, Prosecuting Attorney for Gadsden County, State of Florida; Hinton Folsom, Tax Collector for Jackson County, State of Florida; R. H. Buford, State Attorney for Ninth Judicial Circuit, State of Florida; H. B. Tiller, Tax Collector for Washington County, State of Florida; A. D. Carmichael, Prosecuting Attorney for Washington County, State of Florida; G. W. Miller, Tax Collector for Alachua County, State of Florida; J. B. Blackwell, Tax Collector for Bay County, State of Florida; J. T. Grayson, Tax Collector for Calhoun County, State of Florida; G. W. Hinsey, Tax Collector for Franklin County, State of Florida; J. W. Johnson, Tax Collector for Holmes County, State of Florida; Edwin W. Tucker, Tax Collector for Jefferson County, State of Florida; S. R. Lanfston, Tax Collector for La Fayette County, State of Florida; Walter A. Demilly, Tax Collector for Leon County, State of Florida; John L. Carter, Tax Collector for Levy County, State of Florida; G. Morgan Deason, Tax Collector for Liberty County, State of Florida; John W. Helms, Tax Collector for Santa Rosa County, State of Florida; Frank M. Tyler, Tax Collector for St. Lucie County, State of Florida; Alton C. Hendry, Tax Collector for Taylor County, State of Florida; W. G. Durance, Tax Collector for Waukulla County, State of Florida; James A. McLean, Tax Collector for Walton County, State of Florida, Defendants.

48 Upon application of the Complainants in the above entitled cause, and the presentation and consideration of the Bill of Complaint, and the allegations thereof, sworn to as appears from the

affidavits attached thereto, and it appearing thereby that irreparable loss and damage would result to the Complainants unless a temporary restraining order is granted in the premises;

It is hereby ordered that each of said defendant Tax Collectors hereinbefore named, as such Tax Collectors and each of said defendant State's Attorney-, hereinabove named, as such State Attorney, and each of said defendant County Solicitors, hereinbefore named, as such County Solicitors, and each of said defendant Prosecuting Attorneys, hereinbefore named, as such Prosecuting Attorney, and all other persons acting by, through or under them or by their authority or the authority of any of them, and all other persons who may act in any of said offices or in place or stead of any of said defendants or under or by virtue of any of said provisions of said section 35 of said Statute of the State of Florida, complained of, to-wit, Chapter 6421 of the laws of Florida, be and are hereby restrained until the hearing and determination of the application of Complainants in said cause for an interlocutory injunction, from collecting or attempting to collect from said Complainants or any of them, or from any person, firm or corporation similarly situated, said license taxes or any of them, or any part thereof, mentioned or provided for in Section 35 in said Statute of the State of Florida, for or because of or on account of offering, giving, selling or delivering with merchandise or using any coupon, slip, certificate or other evidence of indebtedness or liability or like device or
49 token, and from levying on, seizing selling or interfering with any property of said Complainants or any of them or any other person similarly situated, for the purpose of collecting said license taxes, or any of them, or any part thereof and from causing, beginning or instituting any prosecution, information, indictment, arrest, imprisonment or any other criminal proceeding or carrying on or prosecuting any such that may be instituted or begun, after the filing of this Bill of Complaint, or the making or issuance of this restraining order herein, or on any indictment or information found or filed thereafter for the purpose of collecting or causing to be paid said license taxes or any of them, or any part thereof, or of punishing, fining or imprisoning or causing the same to be done of said Complainants or any of them or of any other person, firm or corporation similarly situated, and from causing any of said things to be done and from taking any other action or in any other manner interfering with the Complainants or any of them or any other person, firm or corporation, similarly situated, or in their respective businesses, by reason or because of said license taxes and said provisions of said statute hereinabove mentioned, to-wit, Chapter 6421, of the laws of the State of Florida.

Done and ordered this 21st. day of August, A. D. 1913.

RHYDON M. CALL,
District Judge, Southern District of Florida.

(Endorsed:) Restraining order. Filed Aug. 21st. 1913, E. O. Locke, Clerk.

50 In the United States District Court for the Southern District of Florida.

VAN DEMAN & LEWIS COMPANY et al.
vs.
JOHN W. RAST, Tax Collector, etc., et al.

It is Ordered that the above entitled case be heard before Circuit Judge David D. Shelby and District Judges Wm. B. Sheppard and Rhydon M. Call, at Huntsville, Alabama, on Thursday, September 18, 1913, at 10 o'clock A. M.

RHYDON M. CALL,
District Judge, Southern District of Florida.

A true copy.
E. O. LOCKE, *Clerk.*

(Endorsed:) Order Setting Case for Hearing Sept. 18th. 1913. Filed Sep? 8th. 1913, E. O. Locke, Clerk. Sep. 8, 1913.

51 In the District Court of the United States for the Southern District of Florida. In Chancery.

VAN DEMAN AND LEWIS COMPANY, a Corporation Organized and Existing under the Laws of Florida, et al., Complainants,
vs.
JOHN R. RAST, Tax Collector for Duval County, State of Florida, et al., Defendants.

The defendants herein, appearing specially and without submitting to or acknowledging the jurisdiction of this Court to try and determine the issues involved or to make any valid orders herein, move the Court to dismiss this suit and for grounds for such motion say:

1. That no sufficient facts are averred in complainants' bill of complaint to authorize this Court to take jurisdiction in this cause and enjoin and restrain the defendants, who are officers of the State of Florida, from the performance of the duties imposed upon them by the statute referred to, viz: Section 35 of Chapter 6421, Acts of 1913, Laws of Florida.

2. That it appears from the averments of complainants' bill of complaint that complainants have a complete and absolute remedy at law.

3. That it appears from the averments of complainants' bill of complaint that they seek to enjoin and restrain prosecuting officers of the State of Florida from the performance of their official duty in the enforcement of a criminal statute of the State of Florida of a general and public nature.

4. That it appears from the averments of complainants' bill of complaint that they seek to enjoin an alleged threatened seizure of

personal property of complainants in the enforcement of the collection of an alleged illegal tax.

52 5. That it appears from the averments of complainants' bill of complaint that they seek to enjoin a threatened seizure of personal property of complainants in the enforcement of the collection of a tax imposed by a statute of the State of Florida of a general and public nature.

6. That it does not appear from the facts averred in complainants' bill of complaint that an enforcement of the provisions of the statute referred to will regulate, hinder, restrain, prohibit or destroy interstate commerce between the State of Florida and other States of the United States, in violation of the provisions, or any of them, of the constitution of the United States.

7. That it does not appear from the facts averred in complainants' bill of complaint that an enforcement of the provisions of the said statute will deprive or tend to deprive complainants of liberty or property without due process of law, in violation of the provisions, or any of them, of the constitution of the United States.

8. That it does not appear from the facts averred in complainants' bill of complaint that an enforcement of the provisions of the said statute will deny to complainants the equal protection of the law, in violation of the provisions, or any of them, of the constitution of the United States.

9. That it does not appear from the facts averred in complainants' bill of complaint that an enforcement of the provisions of the said statute will tend to impair contra-tual obligations of the complainants, in violation of the provisions, or any of them, of the constitution of the United States.

10. That it does not appear from the facts averred in complainants' bill of complaint that an enforcement of the provisions of the said Statute will require or result in an arbitrary and unlawful classification of the business of complainants for purposes of taxation, in violation of the provisions, or any of them, of the constitution of the United States.

T. F. WEST,
Attorney General of the State of Florida, for the Defendant.

September 11, 1913.

(Endorsed:) Motion to Dismiss Bill. Filed Sep. 12, 1913, E. O. Locke, Clerk.

53 In the District Court of the United States for the Southern District of Florida. In Chancery.

VAN DEMAN AND LEWIS COMPANY, a Corporation Organized and Existing under the Laws of the State of Florida, et al., Complainants,

vs.

JOHN W. RAST, Tax Collector for Duval County, State of Florida, et al., Defendants.

Notice of Hearing of Application for Interlocutory Injunction.

The Honorable Park Trammell, Governor of the State of Florida, The Honorable Thomas F. West, Attorney General of the State of Florida, and the Defendants in the above entitled cause, and each of them, are hereby notified that the application filed therein in said Court by the complainants in said cause for interlocutory injunction during the pendency of said suit, in accordance with the prayers of the Bill of Complaint therein, a copy of which Bill of Complaint is herewith served on them, will be heard at the City of Huntsville in the State of Alabama, on Thursday the 18th. day of September, A. D. 1913, at 10 o'clock A. M. or as soon thereafter as counsel can be heard by and before the Honorable David D. Shelby, Circuit Judge in and for the Fifth Circuit of United States, The Honorable Rhydon M. Call, District Judge for the Southern District of Florida and The Honorable W. B. Sheppard, District Judge for the Northern District of Florida.

CHARLES M. COOPER,
CHARLES P. COOPER,
JAMES J. G. COOPER,
Counsel and Solicitors for Complainants.

(Endorsed:) Notice of Hearing of Application for Interlocutory Injunction. Filed Sept. 16., 1913, E. O. Locke, Clerk.

54 In the District Court of the United States for the Southern District of Florida. In Chancery.

VAN DEMAN AND LEWIS COMPANY, a Corporation Organized and Existing under the Laws of the State of Florida, et al., Complainants,

vs.

JOHN W. RAST, Tax Collector for Duval County, State of Florida, et al., Defendants.

Notice of Hearing of Application for Interlocutory Injunction.

The Honorable Park Trammell, Govern- of the State of Florida, The Honorable Thomas F. West, Attorney General of the State of Florida, and the Defendants in the above entitled cause, and each

of them, are hereby notified that the application filed therein in said Court by the Complainants in said cause for interlocutory injunction during the pendency of said suit, in accordance with the prayers of the Bill of Complaint therein a copy of which Bill of Complaint is herewith served on them, will be heard at the City of Huntsville, in the State of Alabama, on Thursday, the 18th. day of September A. D. 1913, at 10 o'clock A. M. or as soon thereafter as counsel can be heard by and before The Honorable David D. Shelby, Circuit Judge in and for the Fifth Circuit of the United States, the Honorable Rhydon M. Call, District Judge for the Southern District of Florida, and The Honorable W. B. Sheppard, District Judge for the Northern District of Florida.

CHARLES M. COOPER,
CHARLES P. COOPER,
JAMES J. G. COOPER,
Counsel and Solicitors for Complainants.

Service of copy of above notice and of copy of Bill of Complaint acknowledged this 11th. day of September A. D. 1913.

T. F. WEST.

(Endorsed:) Acknowledgment of Service of Notice of Application for Interlocutory Injunction by T. F. West, Attorney General and defendants' solicitor. Filed Sep. 16th, 1913, E. O. Locke, Clerk.

55 In the District Court of the United States for the Southern District of Florida. In Chancery.

VAN DEMAN AND LEWIS COMPANY, a Corporation Organized and Existing under the Laws of the State of Florida, et al., Complainants,

vs.

JOHN W. RAST, Tax Collector for Duval County, State of Florida, et al., Defendants.

Notice of Hearing of Application for Interlocutory Injunction.

The Honorable Park Trammell, Govern- of the State of Florida, The Honorable Thomas F. West, Attorney General of the State of Florida, and the Defendants in the above entitled cause, and each of them, are hereby notified that the application filed therein in said Court by the Complainants in said cause for interlocutory injunction during the pendency of said suit, in accordance with the prayers of the Bill of Complaint therein a copy of which Bill of Complaint is herewith served on them, will be heard at the City of Huntsville, in the State of Alabama, on Thursday, the 18th. day of September A. D. 1913, at 10 o'clock A. M. or as soon thereafter as counsel can be heard by and before The Honorable David D. Shelby Circuit Judge in and for the Fifth Circuit of the United States, The Honorable Rhydon M. Call, District Judge for the Southern District

of Florida, and The Honorable W. B. Sheppard, District Judge for the Northern District of Florida.

CHARLES M. COOPER,
CHARLES P. COOPER,
JAMES J. G. COOPER,
Counsel and Solicitors for Complainants.

Service of copy of above notice and of copy of Bill of Complaint acknowledged this 11th day of September A. D. 1913.

PARK TRAMMELL.

(Endorsed:) Acknowledgment of Service of Notice of Application for interlocutory injunction by Governor —. Filed Sep. 16th 1913, E. O. Locke, Clerk.

56 In the District Court of the United States in and for the Southern District of Florida. In Chancery.

VAN DEMAN AND LEWIS COMPANY, a Corporation Organized and Existing under the Laws of the State of Florida, et al., Complainants,

vs.

JOHN W. RAST, Tax Collector for Duval County, State of Florida, et al., Defendants.

UNITED STATES OF AMERICA,
Southern District of Florida, ss:

I, Eugene O. Locke, Clerk of the District Court of the United States in and for the Southern District of Florida, do hereby certify that on the 9th day of September A. D. 1913, I mailed under Equity Rule 4 of the United States Courts to each and every defendant in the above entitled suit and also to the Governor and Attorney General of the State of Florida, a copy of the "Order for Hearing Set for September 18th 1913, at Huntsville, Alabama," and I also made the following entry on the Equity Docket in my office, to-wit: September 9th 1913, issuing and mailing seventy seven notices of hearing at Huntsville Alabama for September 18th 1913, one to each of the defendants and one to the Governor and one to the Attorney General of the State of Florida seventy seven folios at ten cents a folio, $7.70" and I further certify that the original order is now and was at that time a part of the record on file in my office and that said original order is recorded in my office in Equity Journal page sixty (60), and a copy of which above mentioned order is hereto attached.

In witness whereof, I have hereunto set my hand and official seal at Jacksonville, Florida, this 16th day of September A. D. 1913.

[SEAL.]

EUGENE O. LOCKE, *Clerk.*
By EUGENE D. DODGE,
Deputy Clerk.

(Endorsed:) Certificate of E. O. Locke, Clerk of Mailing Notices. Filed Sept. 16th 1913, E. O. Locke, Clerk.

57 In the District Court of the United States for the Southern District of Florida. In Chancery.

VAN DEMAN & LEWIS COMPANY et al.,
vs.
JOHN W. RAST, as Tax Collector for Duval County, Florida, et al.

Opinion.

Charles M., C. P., and J. J. G. Cooper, for the Complainants.
Thomas F. West, Attorney General of Florida, for the defendants.

Before Shelby, Circuit Judge; Call and Sheppard, District Judges.

CALL, *District Judge:*

This cause comes on to be heard on a motion for an interlocutory injunction before Circuit Judge Shelby, and District Judges Sheppard and Call, at Huntsville, Alabama, on September 18, 1913; upon consent of the parties twenty days were allowed the Attorney General of the State of Florida, to file additional briefs.

Van Deman and Lewis Company, a corporation, and five others, corporations and individuals, and others similarly situated, filed their bill of complaint against John W. Rast, Tax Collector of Duval County, Florida, and the Tax Collectors of each County in the State; the different State's Attorneys, County Solicitors and prosecuting attorneys of the Circuits and Counties of the State of Florida.

The bill of complaint alleges among other things that each of the complainants are engaged in business as merchants handling certain articles enumerated, at the sale of which it is the custom to give coupons, slips, certificates or other tokens which are redeemable in merchandise or receivable in part payment for certain articles
58 to be selected by the customer from a list of same furnished by the manufacturer in some instances and the merchant in others. The list is too long to be set out here.

The bill further alleges that each of these complainants have been, long prior to the passage of the act, hereinafter referred to, and still is engaged in the business of selling said goods or some of them, and giving these coupons, slips, certificates or other tokens, redeemable as before mentioned. That trading stamps are substantially like some of the coupons or certificates before mentioned. That each of them carry large stocks of said goods and other articles of merchandise; that coupons, slips, certificates or other tokens are given by the different manufacturers of different lines of goods. That under the act of the Legislature, hereinafter referred to, each is liable to have his stock seized and his person imprisoned and exhorbitant fines imposed, and his business broken up and his avocation destroyed and his customers driven away.

The bill further alleges that each of the complainants have paid all license taxes due to the State of Florida, or any County thereof, for carrying on the several businesses of each, other than the license

taxes concerning any coupon, profit-sharing certificates or other evidence of indebtedness or liability mentioned in the act to be referred to. Also that the amount required to be paid by each will be more than three thousand dollars.

The bill further alleges that at the session of the Legislature of the State of Florida, held during the year 1913, "Chapter 6421, entitled "An Act Imposing Licenses and other" "taxes, Providing for the payment thereof, and prescribing" "Penalties for doing business without a license or other" "failure to comply with the provisions thereof," was passed by said Legislature and approved June 5, 1913, by the Governor of Florida, and then proceeds to
59 attack section 35 of the act on various grounds as violating the constitution of the State of Florida, the commerce clause of the constitution of the United States, the fourteenth amendment to the same, and various other portions of the constitution, specifically set out in the bill of complaint. Further that irreparable damage will occur to each by the seizure of their stocks of goods by the tax collectors of the several counties, etc., setting out the facts whereby such irreparable damage will occur. That the state's attorneys, county solicitors and prosecuting officers do threaten to proceed against them to enforce by criminal proceedings said statute, etc. That the tax collectors of the different counties, acting under instructions from the Comptroller of the State, are threatening to seize their stock, etc. to enforce said license tax. The bill then prays for an injunction order, interlocutory and permanent, against the defendants, restraining and enjoining each of them from attempting to enforce said section 35.

The Attorney General of the State of Florida, specially appearing for each of the defendants, moved to dismiss the bill of complaint on the grounds:

1. That no sufficient facts are averred in complainants' bill of complaint to authorize this court to take jurisdiction in this cause and enjoin and restrain the defendants, who are officers of the State of Florida, from the performance of the duties imposed upon them by the statute referred to, viz.: Section 35, of Chapter 6421, Acts of 1913, Laws of Florida.

2. That it appears from averments of complainant- bill of complaint that complainants have a complete and absolute remedy at law.

3. That it appears from the averments of complainants' bill of complaint that they seek to enjoin and restrain prosecuting officers of the State of Florida, from the performance of their official duty in the enforcement of a criminal statute of the State of Florida, of a general and public nature.

4. That it appears from the averments of the complainants' bill of complaint that they seek to enjoin an alleged threatened seizure of personal property of complainants in the enforcement of the collection of an alleged illegal tax.

5. That it appears from the averments of complainants' bill of complaint that they seek to enjoin a threatened seizure of personal

property of complainants in the enforcement of the collec-
60 tion of a tax imposed by a statute of the State of Florida, of a general and public nature.

6. That it does not appear from the facts averred in complainants' bill of complaint that an enforcement of the provisions of the statute referred to will regulate, hinder, restrain, prohibit or destroy interstate commerce between the State of Florida and other States of the United States, in violation of the provision of any of them, of the constitution of the United States.

7. That it does not appear from the facts averred in complainants' bill of complaint that an enforcement of the provisions of the said statute will deprive or tend to deprive complainants of liberty or property without due process of law, in violation of the provisions, or any of them, of the constitution of the United States.

8. That it does not appear from the facts averred in complainants' bill of complaint that an enforcement of the provisions of the said statute will deny to complainants the equal protection of the law, in violation of the provisions or any of them, of the constitution of the United States.

9. That it does not appear from the facts averred in complainants' bill of complaint that an enforcement of the provisions of the said statute will tend to impair contractual obligations of the complainants, in violation of the provisions, or any of them of the constitution of the United States.

10. That it does not appear from the facts averred in complainants' bill of complaint that an enforcement of the provisions of the said statute will require or result in an arbitrary and unlawful classification of the business of complainants for purposes of taxation, in violation of the provisions, or any of them of the constitution of the United States.

The section of the Act called in question by the bill of complaint, reads as follows:—

"SECTION 35. Merchants, Druggists, and Store Keepers, shall pay a license tax as follows:—

For the first one thousand dollars or fraction of one thousand dollars of stock of merchandise three ($3.00) Dollars in each county and for each place of business, and one and one half ($1.50) Dollars for each additional thousand or fraction thereof; but dealers in merchandise at wholesale only shall pay a license tax of one and one half ($1.50) dollars for each one thousand dollars of their stock of merchandise. Provided, that the words "Stock of merchandise" shall be held to mean the cash value of the merchandise or goods on hand and not the amount of the capital stock invested in the business; Provided, further, That any merchant keeping sewing machines in stock for sale in the same manner as other merchandise shall not be taxed as a sewing machine agent or dealer. Provided, further, that each and every person, firm, corporation, who shall offer with merchandise bargained or sold in the course of trade any coupon, profit-sharing certificate or other evidence of indebtedness or liability, redeemable in premiums, shall pay annually a State license tax of Five Hundred ($500.00) Dollars and a County license

tax of two hundred and fifty ($250.00) Dollars, in each and every county in which said business is conducted or carried on, and if more than one place of such business shall be operated by any per-
61 son, firm or corporation, a separate state and county license shall be taken out for each such place; and no person, firm or corporation shall offer with merchandise, bargained or sold as aforesaid, any coupon, profit-sharing certificate or other evidence of indebtedness or liability, redeemable by any other person, firm or corporation than the one offering the same without paying the above license for each other person, firm, or corporation who may redeem the same. The license prescribed in this section shall be in addition to other licenses prescribed by this Act. Any person violating any of the provisions of this section, whether acting for himself or as agent of another, shall on conviction thereof, be punished by fine not exceeding one thousand dollars or by imprisonment in the county jail not exceeding six months.

Merchants using trading stamps shall pay a license tax of two hundred and fifty ($250.00) Dollars for each place of business, where they use such stamps."

This section also prescribes license taxes for mercantile agencies and merchant tailors. Chap. 6421, Laws of 1913, Sec. 35.

The instant suit is brought by complainants and all others similarly situated against the tax collectors of the different counties, that state's attorneys for the several circuits and prosecuting officers of the several counties, to restrain them and each of them from enforcing the portion of section 35, of Chapter 6421, of the laws of Florida, requiring the payment of a license tax from those issuing coupons, certificates, etc., as mentioned in said section.

The jurisdiction of this Court is invoked on the ground that the statute violates the interstate commerce clause of the constitution of the United States, and the fourteenth amendment to the constitution, in that it abridges the privileges and immunities of complainants and other citizens of the United States, and will deprive them of liberty and property without due process of law, and will deny to them the equal protection of the laws. Equity jurisdiction is invoked to avoid a multiplicity of suits and to prevent irreparable injury to the business and property of the complainants.

The Attorney General of the State of Florida, on behalf of the defendants, moves to dismiss the bill of complaint on the
62 several grounds set out in his motion.

The first and third grounds of the motion may be considered together. It is well settled that state officers may be enjoined from threatened prosecutions to enforce a void statute, by either civil or criminal proceedings, where property rights will be destroyed, and irreparable damage be occasioned by such actions.

Ex parte Young, 209 U. S. 123.

Dobbins vs. Los Angeles, 195 U. S. 223.

Davis & Farnum Mfg. Co. v. Los Angeles 189 U. S. 207.

The second, fourth and fifth grounds of the motion may be disposed of together. The bill alleges a large number of persons in-

terested, their liability to have their property seized, their business destroyed by such seizures and arrest, their customers lost and deprived of their avocations. Ordinarily, the seizure of personal property will not be enjoined by a court of equity, but in the instant case under the allegations of the bill of complaint, that such seizures and arrests on account of the peculiar uses and character of the property whereby they maintain their business and occupations, their losses would be impossible of ascertainment and computation, and thus they have no adequate remedy at law, and brings this case within the exception recognized by all the courts.

And it is on the theory that complainants in the cases had a complete, adequate and sufficient remedy at law, that the Supreme Court of Florida, rendered the decision cited by the Attorney General, in 31 Fla. 160, wherein they cite with approval the case of Baldwin vs. Tucker, in 16 Fla. 258, wherein the court say "Courts of equity have uniformly refused to grant an injunction to restrain a mere trespass, except in rare cases when the mischief would be irreparable by reason of some extraordinary value of quality of the thing endangered."

The Supreme Court of the United States, in the case of Boise Hot & Cold Water Co. vs. Boise City, in 213 U. S. 276 say

63 "Equity will not interfere where there is a remedy at law which is as complete, practicable and adequate as equity could afford. Injunctions should not issue against the enforcement of the tax merely because it is unconstitutional or illegal, unless other circumstances bring the case within some clear ground of equity jurisdiction." "Even though some states may, for convenience of remedy permit equity to enjoin the collection of a tax for mere illegality, courts of a different and paramount sovereignty should not do so, and Federal Courts should not interfere by injunction with the fixed arrangements of a state, if the rights involved can be preserved in any other manner."

The showing made by the bill of complaint that these complainants have large stocks of goods and merchandise subject to the very drastic exactions of this section of the statute; that they are under contract for the sale of such merchandise and that the seizure of their stocks, and *arrests*, as threatened, will cause the loss of trade and customers, interrupt their business and occupations, cause the sacrifice of stock seized and subject them to heavy fines, etc., in our opinion make such a case of irreparable damage to property and property rights as is properly cognizable in equity, and falls squarely within the rule laid down by the Supre- Court above quoted.

The second, fourth and fifth grounds of the motions are not therefore well taken.

The sixth, seventh, eighth, ninth and tenth grounds of the motion challenge the different allegations of the unconstitutionality set up in the bill of complaint and bring us to the consideration of the question whether the section violates the constitution in any respect.

The power of taxation is an incident to and inherent in every

64 sovereign state and may be exercised to such an extent as to embarrass and even destroy, unless restrained from so doing by the organic law.
Postal Tel. Co. vs. Charleston, 153 U. S. 699.
McCray vs. U. S. 195, U. S. 37.
Kehrer vs. Stewart 197 U. S. 50.

The fourteenth amendment to the constitution of the United States declares that no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. And we may say in passing that the constitution of the State of Florida contains the same limitations on the action of the Legislature.

This clause of the Federal constitution has been construed by the Supreme Court of the United States as a prohibition upon the states passing any law that would arbitrarily deprive a person of life, or liberty or arbitrarily deprive him of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; and that no greater burdens should be laid upon one than are laid upon others in the same calling and condition.
Missouri vs. Lewis, 121 U. S. 22.

The tenth ground of the motion contends that this section is not an unlawful and arbitrary classification of business for taxation.

Mr. Justice Harlan, in Connelly vs. Union Sewer Pipe Co., 184 U. S. 540, says "The difficulty is not met by saying that generally speaking the state, when enacting laws may in its discretion, make a classification of persons, firms, corporations and associations, in order to subserve public objects. For this Court has held that classification must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis". "But arbitrary selection can never be justified by
65 calling it classification. The equal protection demanded by the fourteenth amendment forbids this."
Gulf, Col. & Sante Fe Ry. Co. vs. Ellis, 165 U. S. 150.
Cotling vs. Kansas City Stock Yards Co. 183 U. S. 79.

Is there a just basis for the classification attempted in this section of the act? Merchants, etc., all pay a tax according to the value of the stock carried by each, but if they sell goods for which coupons, etc, are given by themselves or others, then they must pay this additional tax for each place of business in each and every county in which said business is conducted or carried on. And if goods are offered for sale with which coupons are given redeemable by persons other than the seller, then this tax must be paid by him for each of said lines of goods.

We can see no just basis for such classification. It is an arbitrary selection of one merchant for the imposition of a "greater burden" than that imposed on others in the same calling and condition.

The legality of what is generally known as the trading stamp business has been generally affirmed by the Courts, State and Federal. The use of coupons, profit-sharing certificates, etc, is an entirely legitimate method of advertising, and the merchants, etc, employing this method are entitled to the protection of the constitution of the United States.

State vs. Shugart, 138 Ala. 86.
Ex parte Drexel. 147 Cal. 763.
Hewin vs. Atlanta, 121 Ga. 723.
Commonwealth vs. Session 178 Mass. 578.

Long vs. State 74 Md. 565 and many others cited in the case of Ryan & Oathout, et al. vs. W. V. Tanner, as Attorney General et al., Eastern District of Washington, recently decided and not yet reported.

The Attorney General in his brief refers to the act of the Legislature prohibiting the shipment of green fruit sustained and upheld by the Supreme Court of Florida, upon authority of the case of Savage vs. Jones, 225 U. S. 501.

66 These cases it seems to us are not in point. Each of these cases were so decided because it was an exercise of police power for the protection of the health of the community. A legitimate subject for police regulation. As before pointed out, this coupon business is legitimate, no way affecting the health or morals of the community.

We do not care, however, to consider the question, whether the act violates the interstate commerce clause of the constitution, having reached the conclusion that the section violates the fourteenth amendment, it is unnecessary that we consider the other grounds of unconstitutionality, alleged in the bill of complaint.

It is therefore ordered that the interlocutory injunction issue as prayed in and by said bill of complaint.

RHYDOM M. CALL,
U. S. District Judge.

SHELBY, *Circuit Judge:*

On the facts appearing in the record, I am of the opinion that the plaintiffs are entitled to the interlocutory injunction, I concur, therefore, in the order granting the same.

W. B. SHEPPARD, *District Judge:*

I hereby concur in the above opinion.

(Endorsed:) Opinion and Order for Interlocutory Injunction. Filed Oct. 23rd. 1913, E. O. Locke, Clerk.

67 In the District Court of the United States for the Southern District of Florida. In Chancery.

Entry in Equity Journal on Page 70.

THURSDAY, October 23rd, 1913.

Present: Hon. Rhydon M. Call, District Judge.
Officers, Petit Jurors, Crier and Bailiffs in attendance. Whereupon Court is opened by due proclamation:

VAN DEMAN & LEWIS Company et al.
vs.
JOHN W. RAST, Tax Collector et al.

The motion of defendants in the above entitled cause to dismiss said suit, having come on to be heard and having been argued by counsel for complainants and defendants, and having been considered by the Court, it is ordered that said motion be, and the same is hereby overruled and denied, and that the defendants have until the 24th. day of November 1913, on or before which day to answer the bill of complaint in said cause.
Done and ordered this 23rd. day of October A. D. 1913.

RHYDON M. CALL,
District Judge.

68 In the United States District Court for the Southern District of Florida. In Chancery.

VAN DEMAN AND LEWIS COMPANY et al., Complainants,
vs.
JOHN W. RAST. Tax Collector for Duval County, et al., Defendants.

The motion of the defendants in the above entitled cause, to dismiss said suit, having come on to be heard, and having been argued by counsel for complainants and defendants, and having been considered by the Court, it is ordered that said motion be, and the same is hereby, overruled and denied, and that the defendants have until the 24th. day of November 1913 on or before which day to answer the Bill of Complaint in said cause.
Done and ordered this 23rd. day of October A. D. 1913.

RHYDON M. CALL
District Judge.

(Endorsed:) Order Denying Motion to Dismiss. Filed Oct. 23, 1913, E. O. Locke, Clerk.

69 In the District Court of the United States, in and for the Southern District of Florida.

The President of the United States of America to John W. Rast, Tax Collector for Duval County, State of Florida; William A. Hallows, Jr., State Attorney for Fourth Judicial Circuit, State of Florida; L. D. Howell, County Solicitor for Duval County, State of Florida; R. B. McLendon, Tax Collector for Dade County, State of Florida; John C. Gramling, State Attorney for Eleventh Judicial Circuit, State of Florida; James T. Sanders, County Solicitor for Dade County, State of Florida; William L. Colbert, Tax Collector for Marion County, State of Florida; John L. Branch, Tax Collector for Hillsborough County, State of Florida; George P. Raney, State Attorney for Sixth Judicial Circuit, State of Florida; William H. Jackson, County Solicitor for Hillsborough County, State of Florida; E. B. McMullen, Tax Collector for Pinellas County, State of Florida; A. M. McMullen, Prosecuting Attorney for Pinellas County, State of Florida; J. A. McLeod, Tax Collector for Suwanee County, State of Florida; C. A. Hardee, State Attorney for Third Judicial Circuit, State of Florida; Charles E. Allen, Tax Collector for Citrus County, State of Florida; George W. Scofield, State Attorney for Fifth Judicial Circuit, State of Florida; D. P. Smith, Tax Collector for Volusia County, State of Florida; C. D. Landis, State Attorney for Seventh Judicial Circuit, State of Florida; R. P. Hamlin, County Solicitor for Volusia County, State of Florida; B. M. Dowling, Tax Collector for Bradford County, State of Florida; A. V. Long, State Attorney for Eighth Judicial Circuit, State of Florida; T. H. Easterling, Tax Collector for Manatee County, State of Florida; J. B. Singletary, State Attorney for Tenth Judicial Circuit, State of Florida; J. L. Collier, Prosecuting Attorney for Manatee County, State of Florida; T. A. Sweeting, Tax Collector for Monroe County, State of Florida; E. P. Roberts, County Solicitor for Monroe County, State of Florida; W. E. Martin, Tax Collector for Orange County, State of Florida; L. G. Starbuck,
70 County Solicitor for Orange County, State of Florida; C. L. Bandy, Tax Collector for Osceola County, State of Florida; H. B. Geiger, Prosecuting Attorney for Osceola County, State of Florida; F. Marion Lanier, Tax Collector for Polk County, State of Florida; R. B. Huffaker, Prosecuting Attorney for Polk County, State of Florida; T. J. Campbell, Tax Collector for Palm Beach County, State of Florida; Gordan R. Broom, Prosecuting Attorney for Palm Beach County, State of Florida; A. M. Driggors, Tax Collector for Baker County, State of Florida; Philip H. Wright, Tax Collector for Brevard County, State of Florida; Arch J. Murrhee, Tax Collector for Clay County, State of Florida; W. M. Dowling, Tax Collector for Columbia County, State of Florida; Cyril Baldwin, Tax Collector for De Soto County, State of Florida; S. J. Hewitt, Tax Collector for Hamilton County, State of Florida; John C. Law, Tax Collector for Hernando County, State of Florida; R. L. Nutt, Tax Collector for Lake

County, State of Florida; Henry A. Blake, Tax Collector for Lee County, State of Florida; Samuel J. Ellison, Tax Collector for Madison County, State of Florida; J. D. Ogilvie, Tax Collector for Nassau County, State of Florida; William L. Mobley, Tax Collector for Pasco County, State of Florida; R. J. Hancock, Tax Collector for Putnam County, State of Florida; H. H. Floyd, Tax Collector for St. Johns County, State of Florida; Frank M. Tyler, Tax Collector for St. Lucie County, State of Florida; John B. Jinkins, Tax ollector for Seminole County, State of Florida; J. H. Hughes, Tax Collector for Sumter County, State of Florida; J. S. Roberts, Tax Collector for Escambia County, State of Florida; John P. Stokes, State Attorney for First Judicial Circuit, State of Florida; Scott M. Loftin, County Solicitor for Escambia County, State of Florida; C. S. Curtis, Tax Collector for Gadsden County, State of Florida; George W. Walker, State Attorney for Second Judicial Circuit, State of Florida; J. Baxter Campbell, Prosecuting Attorney for Gadsden County, State of Florida; Hinton Folson, Tax Collector for Jackson County, State of Florida; R. H. Buford, State Attorney for Ninth Judicial Circuit, State of Florida; H. B. Tiller, Tax Collector for Washington County, State of Florida; A. D. Carmichael, Prosecuting Attorney for Washington County, State of Florida; G. W. Miller, Tax Collector for Alachua County, State of Florida; J. B. Blackwell, Tax Collector for Bay County, State of Florida; J. T. Grayson, Tax Collector for Calhoun County, State of Florida; G. W. Hinsey, Tax Collector for Franklin County, State of Florida; J. W. Johnson, Tax Collector for Holmes County, State of Florida; Edwin W. Tucker, Tax Collector for Jefferson County, State of Florida; S. R. Lanfston, Tax Collector for La Fayette County, State of Florida; Walter A. Demilly, Tax Collector for Leon County, State of Florida; John L. Carter, Tax Collector for Levy County, State of Florida; G. Morgan Deason, Tax Collector for Liberty County, State of Florida; John W. Helms, Tax Collector for Santa Rosa County, State of Florida; Frank M. Tyler, Tax Collector for St. Lucie County, State of Florida; Alton C. Hendry, Tax Collector for Taylor County, State of Florida; W. G. Durance, Tax Collector for Waukulla County, State of Florida; James A. McLean, Tax Collector for Walton County, State of Florida, Defendants:

In accordance with an order and decree filed and entered in the District Court of the United States, in and for the Southern
71 District of Florida, in Chancery, at Jacksonville, Florida on the 23rd. day of October A. D. 1913, signed by the Honorable Rhydon M. Call, District Judge, and concurred in by the Honorable David D. Shelby, Circuit Judge and the Honorable William B. Sheppard, District Judge, you the said defendant Tax Collectors, hereinabove named and each of you as such Tax Collector, and each of you the said defendant State's Attorneys hereinabove named, as such State Attorney, and each of you the said defendant County Solicitors, hereinbefore named as such County Solicitor, and each of you the said defendant Prosecuting Attorneys, hereinbefore named as such Prosecuting Attorney and all other persons acting

by, through or under you or by your authority or the authority of any of you and all other persons who may act in any of said offices or in place or stead of any of said defendants or under or by virtue of any of said provisions of said Section 35 of said Statute of the State of Florida, are hereby enjoined from collecting or attempting to collect from said Complainants or any of them, or from any person, firm or corporation similarly situated said license taxes or any of them, or any part thereof, mentioned or provided for in Section 35 in said Statute of the State of Florida, for or because of or on account of offering, giving, selling, or delivering with merchandise or using any coupon, slip, certificate or other evidence of indebtedness or liability or like device or token, and from levying on, seizing, selling or interferring with any property of said complainants or any of them or any other person similarly situated, for the purpose of collecting said license taxes, or any of them, or any part thereof and from causing, beginning or instituting any prosecution, information, indictment, arrest, imprisonment or other criminal proceeding or carrying on or prosecuting any such that may have been instituted or begun, after the filing of the Bill of Complaint herein, or the making or issuance of the restraining order or this interlocutory injunction herein, or on any indictment or information found or filed thereafter for the purpose of
72 collecting or causing to be paid said license taxes or any of them or any part thereof, or of punishing, fining or imprisoning or causing the same to be done, of said complainants, or any of them, or of any other person, firm or corporation similarly situated, and from causing any of said things to be done and from taking any other action or in any other manner interferring with the Complainants or any of them, or any other person, firm or corporation similarly situated, or in their respective businesses because of said license taxes and said provisions of said Statute hereinbefore mentioned, to-wit, Section 35, Chapter 6421 of the laws of the State of Florida, during the pendency of this suit or until the further order of this Court.

Witness the Honorable Rhydon M. Call, Judge of said Court and the seal thereof at Jacksonville, in said District this 24th. day of October A. D. 1913.

E. O. LOCKE, *Clerk.*

(Marshal's Return.—United States of America, Northern District of Florida, *ss:* I hereby certify and return that I served the annexed Injunction on the therein-named Thos. F. West, Attorney General for the State of Florida and Solicitor of record for defendants by handing to and leaving a true and correct copy thereof with him personally at Tallahassee in said District on the 31st. day of October A. D. 1913. Jas. B. Perkins, U. S. Marshal, by W. L. Strickland, Deputy.)

(Endorsed:) Original Interlocutory Injunction. Filed Nov. 5th. 1913, E. O. Locke, Clerk.

73 In the District Court of the United States for the Southern District of Florida. In Chancery.

VAN DEMAN AND LEWIS COMPANY, a Corporation Organized and Existing under the Laws of the State of Florida; The Harkisheimer Company, a Corporation Organized and Existing under the Laws of the State of Florida; J. S. Pinkussohn Cigar Company, a Corporation Organized and Existing under the Laws of the State of South Carolina; The Forsyth Company, a Corporation Organized and Existing under the Laws of the State of Florida; Joseph R. Mickler, Eli Witt, Complainants,

vs.

JOHN W. RAST, Tax Collector for Duval County, State of Florida; William A. Hallows, Jr., State Attorney for Fourth Judicial Circuit, State of Florida; L. D. Howell, County Solicitor for Duval County, State of Florida; R. B. McLendon, Tax Collector for Dade County, State of Florida; John C. Gramling, State Attorney for Eleventh Judicial Circuit, State of Florida; James T. Sanders, County Solicitor for Dade County, State of Florida; William L. Colbert, Tax Collector for Marion County, State of Florida; John L. Branch, Tax Collector for Hillsborough County, State of Florida; George P. Raney, State Attorney for Sixth Judicial Circuit, State of Florida; William H. Jackson, County Solicitor for Hillsborough County, State of Florida; E. B. McMullen, Tax Collector for Pinellas County, State of Florida; A. M. McMullen, Prosecuting Attorney for Pinellas County, State of Florida; J. A. McLeod, Tax Collector for Suwanee County, State of Florida; C. A. Hardee, State Attorney for Third Judicial Circuit, State of Florida; Charles E. Allen, Tax Collector for Citrus County, State of Florida; George W. Scofield, State Attorney for Fifth Judicial Circuit, State of Florida; D. P. Smith, Tax Collector for Volusia County, State of Florida; C. D. Landis, State Attorney for Seventh Judicial Circuit, State of Florida; R. P. Hamlin, County Solicitor for Volusia County, State of Florida; B. M. Dowling, Tax Collector for Bradford County, State of Florida; A. V. Long, State Attorney for Eighth Judicial Circuit, State of Florida; T. H. Easterling, Tax Collector for Manatee County, State of Florida; J. B. Singletary, State Attorney for Tenth Judicial Circuit, State of Florida; J. L. Collier, Prosecuting Attorney for Manatee County, State of Florida; T. A. Sweeting, Tax Collector for Monroe County, State of Florida; E. P. Roberts, County Solicitor for Monroe County, State of Florida; W. E. Martin, Tax Col-
74 lector for Orange County, State of Florida; L. G. Starbuck, County Solicitor for Orange County, State of Florida; C. L.Bandy, Tax Collector for Osceola County, State of Florida; H. B. Geiger, Prosecuting Attorney for Osceola County, State of Florida; F. Marion Lanier, Tax Collector for Polk County, State of Florida; R. B. Huffaker, Prosecuting Attorney for Polk County, State of Florida; T. J. Campbell, Tax Collector for Palm Beach County, State of Florida; Gordan R. Broom, Prosecuting Attor-

ney for Palm Beach County, State of Florida; A. M. Driggors, Tax Collector for Baker County, State of Florida; Philip H. Wright, Tax Collector for Brevard County, State of Florida; Arch J. Murrhee, Tax Collector for Clay County, State of Florida; W. M. Dowling, Tax Collector for Columbia County, State of Florida; Cyril Baldwin, Tax Collector for De Soto County, State of Florida; S. J. Hewitt, Tax Collector for Hamilton County, State of Florida; John C. Law, Tax Collector for Hernando County, State of Florida; R. L. Nutt, Tax Collector for Lake County, State of Florida; Henry A. Blake, Tax Collector for Lee County, State of Florida; Samuel J. Ellison, Tax Collector for Madison County, State of Florida; J. D. Ogilvie, Tax Collector for Nassau County, State of Florida; William L. Mobley, Tax Collector for Pasco County, State of Florida; R. J. Hancock, Tax Collector for Putnam County, State of Florida; H. H. Floyd, Tax Collector for St. Johns County, State of Florida; Frank M. Tyler, Tax Collector for St. Lucie County, State of Florida; John B. Jinkins, Tax Collector for Seminole County, State of Florida; J. H. Hughes, Tax Collector for Sumter County, State of Florida; J. S. Roberts, Tax Collector for Escambia County, State of Florida; John P. Stokes, State Attorney for First Judicial Circuit, State of Florida; Scott M. Loftin, County Solicitor for Escambia County, State of Florida; C. S. Curtis, Tax Collector for Gadsden County, State of Florida; George W. Walker, State Attorney for Second Judicial Circuit, State of Florida; J. Baxter Campbell, Prosecuting Attorney for Gadsden County, State of Florida; Hinton Folsom, Tax Collector for Jackson County, State of Florida; R. H. Buford, State Attorney for Ninth Judicial Circuit, State of Florida; H. B. Tiller, Tax Collector for Washington County, State of Florida; A. D. Carmichael, Prosecuting Attorney for Washington County, State of Florida; G. W. Miller, Tax Collector for Alachua County, State of Florida; J. B. Blackwell, Tax Collector for Bay County, State of Florida; J. T. Grayson, Tax Collector for Calhoun County, State of Florida; G. W. Hinsey, Tax Collector for Franklin County, State of Florida; J. W. Johnson, Tax Collector for Holmes County, State of Florida; Edwin W. Tucker, Tax Collector for Jefferson County, State of Florida; S. R. Lanfston, Tax Collector for La Fayette County, State of Florida; Walter A. Demilly, Tax Collector for Leon County, State of Florida; John L. Carter, Tax Collector for Levy County, State of Florida; G. Morgan Deason, Tax Collector for Liberty County, State of Florida; John W. Helms, Tax Collector for Santa Rosa County, State of Florida; Frank M. Tyler, Tax Collector for St. Lucie County, State of Florida; Alton C. Hendry, Tax Collector for Taylor County, State of Florida; W. G. Durance, Tax Collector for Waukulla County, State of Florida; James A. McLean, Tax Collector for Walton County, State of Florida, Defendants.

75 The above named defendants feeling themselves aggrieved by the order and decree made and entered on the 23rd day of October, A. D. 1913, in the above entitled cause overruling and denying the motion of said defendants to dismiss the

bill of complaint of said complainants, and granting to said complainants a temporary injunction against said defendants, do hereby appeal from said order and decree to the Supreme Court of the United States, for reasons specified in the assignment of errors filed herewith, and they do pray that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the United States Supreme Court at Washington, D. C., as is provided by law.

T. F. WEST,
Attorney General of the State of Florida,
Attorney for Defendants.

11/17/13.

The foregoing claim of appeal is allowed.

RHYDON M. CALL, *Judge.*

(Endorsed:) Petition for appeal and allowance of appeal. Filed Nov. 24th, 1913, E. O. Locke, Clerk.

76 In the District Court of the United States for the Southern District of Florida. In Chancery.

VAN DEMAN AND LEWIS COMPANY, a Corporation Organized and Existing under the Laws of the State of Florida; The Harkisheimer Company, a Corporation Organized and Existing under the Laws of the State of Florida; J. S. Pinkussohn Cigar Company, a Corporation Organized and Existing under the Laws of the State of South Carolina; The Forsyth Company, a Corporation Organized and Existing under the Laws of the State of Florida; Joseph R. Mickler, Eli Witt, Complainants,

vs.

JOHN W. RAST, Tax Collector for Duval County, State of Florida; William A. Hallows, Jr., State Attorney for Fourth Judicial Circuit, State of Florida; L. D. Howell, County Solicitor for Duval County, State of Florida; R. B. McLendon, Tax Collector for Dade County, State of Florida; John C. Gramling, State Attorney for Eleventh Judicial Circuit, State of Florida; James T. Sanders, County Solicitor for Dade County, State of Florida; William L. Colbert, Tax Collector for Marion County, State of Florida; John L. Branch, Tax Collector for Hillsborough County, State of Florida; George P. Raney, State Attorney for Sixth Judicial Circuit, State of Florida; William H. Jackson, County Solicitor for Hillsborough County, State of Florida; E. B. McMullen, Tax Collector for Pinellas County, State of Florida; A. M. McMullen, Prosecuting Attorney for Pinellas County, State of Florida; J. A. McLeod, Tax Collector for Suwanee County, State of Florida; C. A. Hardee, State Attorney for Third Judicial Circuit, State of Florida; Charles E. Allen, Tax Collector for Citrus County, State of Florida; George W. Scofield, State Attorney for Fifth Judicial Circuit, State of Florida; D. P. Smith, Tax Collector for Volusia County, State of Florida; C. D. Landis, State Attorney for Sev-

enth Judicial Circuit, State of Florida; R. P. Hamlin, County Solicitor for Volusia County, State of Florida; B. M. Dowling, Tax Collector for Bradford County, State of Florida; A. V. Long, State Attorney for Eighth Judicial Circuit, State of Florida; T. H. Easterling, Tax Collector for Manatee County, State of Florida; J. B. Singletary, State Attorney for Tenth Judicial Circuit, State of Florida; J. L. Collier, Prosecuting Attorney for Manatee County, State of Florida; T. A. Sweeting, Tax Collector for Monroe County, State of Florida; E. P. Roberts, County Solicitor for Monroe County, State of Florida; W. E. Martin, Tax Col-
77 lector for Orange County, State of Florida; L. G. Starbuck, County Solicitor for Orange County, State of Florida; C. L.Bandy, Tax Collector for Osceola County, State of Florida; H. B. Geiger, Prosecuting Attorney for Osceola County, State of Florida; F. Marion Lanier, Tax Collector for Polk County, State of Florida; R. B. Huffaker, Prosecuting Attorney for Polk County, State of Florida; T. J. Campbell, Tax Collector for Palm Beach County, State of Florida; Gordan R. Broom, Prosecuting Attorney for Palm Beach County, State of Florida; A. M. Driggors, Tax Collector for Baker County, State of Florida; Philip H. Wright, Tax Collector for Brevard County, State of Florida; Arch J. Murrhee, Tax Collector for Clay County, State of Florida; W. M. Dowling, Tax Collector for Columbia County, State of Florida; Cyril Baldwin, Tax Collector for De Soto County, State of Florida; S. J. Hewitt, Tax Collector for Hamilton County, State of Florida; John C. Law, Tax Collector for Hernando County, State of Florida; R. L. Nutt, Tax Collector for Lake County, State of Florida; Henry A. Blake, Tax Collector for Lee County, State of Florida; Samuel J. Ellison, Tax Collector for Madison County, State of Florida; J. D. Ogilvie, Tax Collector for Nassau County, State of Florida; William L. Mobley, Tax Collector for Pasco County, State of Florida; R. J. Hancock, Tax Collector for Putnam County, State of Florida; H. H. Floyd, Tax Collector for St. Johns County, State of Florida; Frank M. Tyler, Tax Collector for St. Lucie County, State of Florida; John B. Jinkins, Tax Collector for Seminole County, State of Florida; J. H. Hughes, Tax Collector for Sumter County, State of Florida; J. S. Roberts, Tax Collector for Escambia County, State of Florida; John P. Stokes, State Attorney for First Judicial Circuit, State of Florida; Scott M. Loftin, County Solicitor for Escambia County, State of Florida; C. S. Curtis, Tax Collector for Gadsden County, State of Florida; George W. Walker, State Attorney for Second Judicial Circuit, State of Florida; J. Baxter Campbell, Prosecuting Attorney for Gadsden County, State of Florida; Hinton Folsom, Tax Collector for Jackson County, State of Florida; R. H. Buford, State Attorney for Ninth Judicial Circuit, State of Florida; H. B. Tiller, Tax Collector for Washington County, State of Florida; A. D. Carmichael, Prosecuting Attorney for Washington County, State of Florida; G. W. Miller, Tax Collector for Alachua County, State of Florida; J. B. Blackwell, Tax Collector for Bay County, State of Florida; J. T. Grayson, Tax Collector for Calhoun County,

State of Florida; G. W. Hinsey, Tax Collector for Franklin County, State of Florida; J. W. Johnson, Tax Collector for Holmes County, State of Florida; Edwin W. Tucker, Tax Collector for Jefferson County, State of Florida; S. R. Lanfston, Tax Collector for La Fayette County, State of Florida; Walter A. Demilly, Tax Collector for Leon County, State of Florida; John L. Carter, Tax Collector for Levy County, State of Florida; G. Morgan Deason, Tax Collector for Liberty County, State of Florida; John W. Helms, Tax Collector for Santa Rosa County, State of Florida; Frank M. Tyler, Tax Collector for St. Lucie County, State of Florida; Alton C. Hendry, Tax Collector for Taylor County, State of Florida; W. G. Durance, Tax Collector for Waukulla County, State of Florida; James A. McLean, Tax Collector for Walton County, State of Florida, Defendants.

78 Now come the above named defendants by T. F. West Attorney General of the State of Florida, Attorney for said defendants, and having prayed for and entered an appeal to the Supreme Court of the United States from an order and decree entered herein on the 23rd day of October A. D. 1913, overruling and denying the motion of said defendants to dismiss the bill of complaint of said complainants, and granting to said complainants a temporary injunction against said defendants, pursuant to the prayer of the bill of complaint in this cause, and respectfully represent as grounds of appeal therefrom, and as an assignment of errors herein that the said Court erred in the following particulars.

1. In overruling and denying the motion of said defendants to dismiss the bill of complaint of said complainants upon the grounds stated in said motion to dismiss.

2. In deciding that the statute referred to, that is to say Section 35 of Chapter 6421, Laws of Florida, contravenes and violates the provisions of the Fourteenth Amendment to the Constitution of the United States, and is therefore invalid and not enforce-able.

3. In deciding that a temporary injunction as prayed for in complainants' bill of complaint should issue against the said defendants, and each of them.

4. In granting the prayer of complainants for a temporary injunction against the said defendants, as prayed in the bill of complaint.

T. F. WEST,
Attorney General of the State of Florida;
Attorney for Defendants.

11/17/13.

Endorsed: Assignment of Errors. Filed Nov. 20th 1913, E. O. Locke, Clerk.

79 In the District Court of the United States for the Southern District of Florida. In Chancery.

VAN DEMAN AND LEWIS COMPANY, a Corporation Organized and Existing under the Laws of the State of Florida; The Harkisheimer Company, a Corporation Organized and Existing under the Laws of the State of Florida; J. S. Pinkussohn Cigar Company, a Corporation Organized and Existing under the Laws of the State of South Carolina; The Forsyth Company, a Corporation Organized and Existing under the Laws of the State of Florida; Joseph R. Mickler, Eli Witt, Complainants,

vs.

JOHN W. RAST, Tax Collector for Duval County, State of Florida; William A. Hallows, Jr., State Attorney for Fourth Judicial Circuit, State of Florida; L. D. Howell, County Solicitor for Duval County, State of Florida; R. B. McLendon, Tax Collector for Dade County, State of Florida; John C. Gramling, State Attorney for Eleventh Judicial Circuit, State of Florida; James T. Sanders, County Solicitor for Dade County, State of Florida; William L. Colbert, Tax Collector for Marion County, State of Florida; John L. Branch, Tax Collector for Hillsborough County, State of Florida; George P. Raney, State Attorney for Sixth Judicial Circuit, State of Florida; William H. Jackson, County Solicitor for Hillsborough County, State of Florida; E. B. McMullen, Tax Collector for Pinellas County, State of Florida; A. M. McMullen, Prosecuting Attorney for Pinellas County, State of Florida; J. A. McLeod, Tax Collector for Suwanee County, State of Florida; C. A. Hardee, State Attorney for Third Judicial Circuit, State of Florida; Charles E. Allen, Tax Collector for Citrus County, State of Florida; George W. Scofield, State Attorney for Fifth Judicial Circuit, State of Florida; D. P. Smith, Tax Collector for Volusia County, State of Florida; C. D. Landis, State Attorney for Seventh Judicial Circuit, State of Florida; R. P. Hamlin, County Solicitor for Volusia County, State of Florida; B. M. Dowling, Tax Collector for Bradford County, State of Florida; A. V. Long, State Attorney for Eighth Judicial Circuit, State of Florida; T. H. Easterling, Tax Collector for Manatee County, State of Florida; J. B. Singletary, State Attorney for Tenth Judicial Circuit, State of Florida; J. L. Collier, Prosecuting Attorney for Manatee County, State of Florida; T. A. Sweeting, Tax Collector for Monroe County, State of Florida; E. P. Roberts, County Solicitor for Monroe County, State of Florida; W. E. Martin, Tax Col-
80 lector for Orange County, State of Florida; L. G. Starbuck, County Solicitor for Orange County, State of Florida; C. L. Bandy, Tax Collector for Osceola County, State of Florida; H. B. Geiger, Prosecuting Attorney for Osceola County, State of Florida; F. Marion Lanier, Tax Collector for Polk County, State of Florida; R. B. Huffaker, Prosecuting Attorney for Polk County, State of Florida; T. J. Campbell, Tax Collector for Palm Beach County, State of Florida; Gordan R. Broom, Prosecuting Attor-

ney for Palm Beach County, State of Florida; A. M. Driggors, Tax Collector for Baker County, State of Florida; Philip H. Wright, Tax Collector for Brevard County, State of Florida; Arch J. Murrhee, Tax Collector for Clay County, State of Florida; W. M. Dowling, Tax Collector for Columbia County, State of Florida; Cyril Baldwin, Tax Collector for De Soto County, State of Florida; S. J. Hewitt, Tax Collector for Hamilton County, State of Florida; John C. Law, Tax Collector for Hernando County, State of Florida; R. L. Nutt, Tax Collector for Lake County, State of Florida; Henry A. Blake, Tax Collector for Lee County, State of Florida; Samuel J. Ellison, Tax Collector for Madison County, State of Florida; J. D. Ogilvie, Tax Collector for Nassau County, State of Florida; William L. Mobley, Tax Collector for Pasco County, State of Florida; R. J. Hancock, Tax Collector for Putnam County, State of Florida; H. H. Floyd, Tax Collector for St. Johns County, State of Florida; Frank M. Tyler, Tax Collector for St. Lucie County, State of Florida; John B. Jinkins, Tax Collector for Seminole County, State of Florida; J. H. Hughes, Tax Collector for Sumter County, State of Florida; J. S. Roberts, Tax Collector for Escambia County, State of Florida; John P. Stokes, State Attorney for First Judicial Circuit, State of Florida; Scott M. Loftin, County Solicitor for Escambia County, State of Florida; C. S. Curtis, Tax Collector for Gadsden County, State of Florida; George W. Walker, State Attorney for Second Judicial Circuit, State of Florida; J. Baxter Campbell, Prosecuting Attorney for Gadsden County, State of Florida; Hinton Folsom, Tax Collector for Jackson County, State of Florida; R. H. Buford, State Attorney for Ninth Judicial Circuit, State of Florida; H. B. Tiller, Tax Collector for Washington County, State of Florida; A. D. Carmichael, Prosecuting Attorney for Washington County, State of Florida; G. W. Miller, Tax Collector for Alachua County, State of Florida; J. B. Blackwell, Tax Collector for Bay County, State of Florida; J. T. Grayson, Tax Collector for Calhoun County, State of Florida; G. W. Hinsey, Tax Collector for Franklin County, State of Florida; J. W. Johnson, Tax Collector for Holmes County, State of Florida; Edwin W. Tucker, Tax Collector for Jefferson County, State of Florida; S. R. Lanfston, Tax Collector for La Fayette County, State of Florida; Walter A. Demilly, Tax Collector for Leon County, State of Florida; John L. Carter, Tax Collector for Levy County, State of Florida; G. Morgan Deason, Tax Collector for Liberty County, State of Florida; John W. Helms, Tax Collector for Santa Rosa County, State of Florida; Frank M. Tyler, Tax Collector for St. Lucie County, State of Florida; Alton C. Hendry, Tax Collector for Taylor County, State of Florida; W. G. Durance, Tax Collector for Waukulla County, State of Florida; James A. McLean, Tax Collector for Walton County, State of Florida, Defendants.

81 Now, on this 20th day of November, A. D. 1913, pursuant to the application for appeal, it is ordered that the above appeal be allowed, returnable to the Supreme Court of the

United States within thirty (30) days from this date, upon bond being given by or on behalf of the said defendants, with surety in the sum of Twenty five hundred dollars, for the payment of damages and costs, conditioned as required by law, payable to the above named complainants.

Done and ordered this 20th day of November A. D. 1913.

RHYDON M. McCALL, *Judge.*

(Endorsed:) Order Allowing Appeal. Filed Nov. 24th, 1913. E. O. Locke, Clerk.

82 In the United States District Court, for the Southern District of Florida.

JOHN W. RAST, Tax Collector for Duval County, State of Florida, et al., Appellants,

vs.

VAN DEMAN AND LEWIS COMPANY, a Corporation Organized and Existing under the Laws of the State of Florida, et al., Appellees.

To Van Deman and Lewis Company; The Harkisheimer Company; J. S. Pinkussohn Cigar Company; The Forsyth Company; Joseph R. Mickler; and Eli Witt, Greeting:

You and each of you are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States of America to be holden in the City of Washington, District of Columbia, in the United States, wherein the above named John W. Rast, Tax Collector for Duval County, State of Florida, et al., are appellants, and the above named Van Deman and Lewis Company, a corporation organized and existing under the laws of the State of Florida, et al. are Appellees; to show cause if any there be, why the order and decree of the Judges David D. Shelby, Rhydon M. Call and William B. Sheppard as within the appeal herein mentioned should not be corrected and reversed, and why speedy justice should not be done to the parties in this behalf;

Witness, the Honorable Edward D. White, Chief Justice of the United States, this 20th day of November, A. D. 1913.

[SEAL.] RHYDON M. CALL, *Judge.*

11/17/13.

(Endorsed:) Service accepted this 10th day of December A. D. 1913, Charles M. Cooper, Counsel & Solicitor for Complainants and Appellees.

(Further Endorsement:) Original Citation. Filed Nov. 24", 1913, E. O. Locke, Clerk.

83 In the District Court of the United States, for the Southern District of Florida. In Chancery.

JOHN W. RAST, Tax Collector for Duval County, State of Florida, et al., Appellants,

vs.

VAN DEMAN AND LEWIS COMPANY, a Corporation Organized and Existing under the Laws of the State of Florida, et al., Appellees.

Know all men by these presents, That Royal Indemnity Company, a New York corporation is held and firmly bound unto Van Deman and Lewis Company, a corporation organized and existing under the laws of the State of Florida; The Harkisheimer Company, a corporation organized and existing under the laws of the State of Florida; J. S. Pinkussohn Cigar Company, a corporation organized and existing under the laws of the State of South Carolina; The Forsyth Company, a corporation organized and existing under the laws of the State of Florida, Joseph R. Mickler; Eli Witt, their legal representatives and successors, in the sum of twenty five hundred ($2,500) dollars, for the payment whereof well and truly to be made the said Royal Indemnity Company does hereby bind itself and its successors and assigns firmly by these presents.

Signed and Sealed this 6th day of December A. D. 1913.

The condition of this obligation is such that whereas the said Van Deman and Lewis Company, a corporation organized and existing under the laws of the State of Florida; The Harkisheimer Company, a corporation organized and existing under the laws of the State of Florida; J. S. Pinkussohn Cigar Company, a corporation organized and existing under the laws of the State of South Carolina; The Forsyth Company, a corporation organized and existing under the laws of the State of Florida; Joseph R. Mickler, and Eli Witt did heretofore apply for and secure an order of said District Court, in Chancery, made and entered the 23rd
84 day of October, A. D. 1913, for an interlocutory injunction enjoining the defendants in said suit from enforcing the provisions of Section 35 of Chapter 6421, Laws of Florida, as prayed in Complainants' Bill of Complaint herein, and in said interlocutory injunction specified, and whereas the said defendants in said suit, Appellants on Appeal, have entered an appeal from such order to the Supreme Court of the United States, and the Judge of this Court has issued a citation directing the said Van Deman and Lewis Company, a corporation organized and existing under the laws of the State of Florida; The Harkisheimer Company, a corporation organized and existing under the laws of the State of Florida; J. S. Pinkussohn Cigar Company, a corporation organized and existing under the laws of the State of South Carolina; The Forsyth Company, a corporation organized and existing under the laws of the State of Florida; Joseph R. Mickler and Elib Witt to be and appear at a session of said Supreme Court.

Now the condition of this obligation is such that if the said John

W. Rast, Tax Collector for Duval County, State of Florida; William A. Hallows, Jr., State Attorney for Fourth Judicial Circuit, State of Florida; L. D. Howell, County Solicitor for Duval County, State of Florida; R. B. McLendon, Tax Collector for Dade County, State of Florida; John C. Gramling, State Attorney for Eleventh Judicial Circuit, State of Florida; James T. Sanders, County Solicitor for Dade County, State of Florida; William L. Colbert, Tax Collector for Marion County, State of Florida; John L. Branch, Tax Collector for Hillsborough County, State of Florida; George P. Raney, State Attorney for Sixth Judicial Circuit, State of Florida; William H. Jackson, County Solicitor for Hillsborough County, State of Florida; E. B. McMullen, Tax Collector for Pinellas County, State of Florida; A. M. McMullen, Prosecuting Attorney for Pinellas County, State of Florida; J. A. McLeon, Tax Collector for Suwanee County, State of Florida; C. A. Hardee, State Attorney for Third Judicial Circuit, State of Florida; Charles E. Allen, Tax Collector for Citrus County, State of Florida; George W. Scofield, State Attorney for Fifth Judicial Circuit, State of Florida; D. P. Smith, Tax Collector for Volusia County, State of Florida; C. D. Landis, State Attorney for Seventh Judicial Circuit, State of Florida; R. P. Hamlin, County Solicitor for Volusia County, State of Florida; B. M. Dowling, Tax Collector for Bradford County, State of Florida; A. V. Long, State Attorney for Eighth Judicial Circuit, State of Florida; T. H. Easterling, Tax Collector for Manatee County, State of Florida; J. B. Singletary, State Attorney for Tenth Judicial Circuit, State of Florida; J. L. Collier, Prosecuting Attorney for Manatee County, State of Florida; T. A. Sweeting, Tax Collector for Monroe County, State of Florida; E. P. Roberts, County Solicitor for Monroe County, State of Florida; W. E. Martin, Tax Collector for Orange County, State of Florida; L. G.
85 Starbuck, County Solicitor for Orange County, State of Florida; C. L. Bandy, Tax Collector for Osceola County, State of Florida; H. B. Geiger, Prosecuting Attorney for Osceola County, State of Florida; F. Marion Lanier, Tax Collector for Polk County, State of Florida; R. B. Huffaker, Prosecuting Attorney for Polk County, State of Florida; T. J. Campbell, Tax Collector for Palm Beach County, State of Florida; Gordon R. Broom, Prosecuting Attorney for Palm Beach County, State of Florida; A. M. Driggors, Tax Collector for Baker County, State of Florida; Philip H. Wright, Tax Collector for Brevard County, State of Florida; Arch J. Murrhee, Tax Collector for Clay County, State of Florida; W. M. Dowling, Tax Collector for Columbia County, State of Florida; Cyril Baldwin, Tax Collector for De Soto County, State of Florida; S. J. Hewitt, Tax Collector for Hamilton County, State of Florida; John C. Law, Tax Collector for Hernando County, State of Florida; R. L. Nutt, Tax Collector for Lake County, State of Florida; Henry A. Blake, Tax Collector for Lee County, State of Florida; Samuel J. Ellison, Tax Collector for Madison County, State of Florida; J. D. Ogilvie, Tax Collector for Nassau County, State of Florida; William L. Mobley, Tax Collector for Pasco County, State of Florida; R. J. Hancock, Tax Collector for Putnam

County, State of Florida; H. H. Floyd, Tax Collector for St. Johns County, State of Florida; Frank M. Tyler, Tax Collector for St. Lucie County, State of Florida; John B. Jinkins, Tax Collector for Seminole County, State of Florida; J. H. Hughes, Tax Collector for Sumter County, State of Florida; J. S. Roberts, Tax Collector for Escambia County, State of Florida; John P. Stokes, State Attorney for First Judicial Circuit, State of Florida; Scott M. Loftin, County Solicitor for Escambia County, State of Florida; C. S. Curtis, Tax Collector for Gadsden County, State of Florida; George W. Walker, State Attorney for Second Judicial Circuit State of Florida; J. Baxter Campbell, Prosecuting Attorney for Gadsden County, State of Florida; Hinton Folsom, Tax Collector for Jackson County, State of Florida; R. H. Buford, State Attorney for Ninth Judicial Circuit, State of Florida; H. B. Tiller, Tax Collector for Washington County, State of Florida; A. D. Carmichael, Prosecuting Attorney for Washington County, State of Florida; G. W. Miller, Tax Collector for Alachua County, State of Florida; J. B. Blackwell, Tax Collector for Bay County, State of Florida; J. T. Grayson, Tax Collector for Calhoun County, State of Florida; G. W. Hinsey, Tax Collector for Franklin County, State of Florida; J. W. Johnson Tax Collector for Holmes County, State of Florida; Edwin W. Tucker, Tax Collector for Jefferson County, State of Florida; S. R. Lanfston, Tax Collector for La Fayette County, State of Florida; Walter A. Demilly, Tax Collector for Leon County, State of Florida; John L. Carter, Tax Collector for Levy County, State of Florida; G. Morgan Deason, Tax Collector for Liberty County, State of Florida; John W. Helms, Tax Collector for Santa Rosa County, State of Florida; Frank M. Tyler, Tax Collector for St. Lucie County, State of Florida; Alton C. Hendry, Tax Collector for Taylor County, State of Florida; W. G. Durance, Tax Collector for Wakulla County, State of Florida; James A. McLean, Tax Collector for Walton County, State of Florida; shall prosecute said appeal
86 to effect and answer all damages and costs if they fail to make good said appeal, then the above obligation to be void; else to remain in full force and virtue.

ROYAL INDEMNITY CO.,
By R. W. BOURS, [SEAL.]
General Agent.

Attest:

M. H. LONG,
Consulting Attorney.

Approved:

RHYDON M. CALL, *Judge.*

Dec. 10, 1913.

(Endorsed:) Appeal Bond. Filed Dec. 10th, 1913, E. O. Locke, Clerk.

87 In the District Court of the United States for the Southern District of Florida. In Chancery.

VAN DEMAN AND LEWIS COMPANY et al., Complainants,
vs.
JOHN W. RAST, Tax Collector for Duval County, et al., Defendants.

It is hereby stipulated and agreed by and between the parties, Complainants and Defendants, in the above entitled cause that no answer shall be filed in said case or any further proceedings had or carried on in said cause in said District Court during the pendency of the appeal of said Defendants to the Supreme Court of the United States that has been filed and begun; but nothing herein shall be construed to or shall prevent any proceedings that may be necessary or requisite in said District Court to enforce the injunction heretofore granted in said cause in said Court or observance thereof or obedience thereto.

November 25th, 1913.

CHARLES M. COOPER,
CHARLES P. COOPER,
JAMES J. G. COOPER,
Counsel and Solicitors for Complainants.
T. F. WEST,
Counsel and Solicitor for Defendants.

(Endorsed:) Agreement that no Answer Need be Filed etc. During Pending of Appeal. Filed Nov. 26th. 1913, E. O. Locke, Clerk.

88 In the District Court of the United States for the Southern District of Florida. In Chancery.

VAN DEMAN AND LEWIS COMPANY et al., Complainants,
vs.
JOHN W. RAST, Tax Collector for Duval County, et al., Defendants

It is hereby stipulated and agreed by and between the parties, Complainants and Defendants, in the above entitled suit, by their respective Counsel and Solicitors, that in the appeal taken by the Defendants in said Court to the Supreme Court of the United States from the order and decree made and entered on the 23rd. day of October, A. D. 1913, in said cause overruling and denying the motion of said defendants to dismiss the Bill of Complaint of said Complainants and granting to said Complainants a temporary injunction against said Defendants, the Clerk of said District Court shall incorporate into the transcript of the record on said Appeal the papers and portions of the record hereinafter specified and may omit such papers and portions as are not specified herein, to-wit, to incorporate the following:

Bill of complaint.
Application for interlocutory injunction &c.
Restraining order.
Order setting case for hearing Sept. 18th. 1913.
Defendant's motion to dismiss.
Notice of hearing of application for interlocutory injunction.
Acknowledgments of service of notice of application for interlocutory injunction by T. F. West, Attorney General, and defendants solicitor.
89 Acknowledgment of service of notice of application for interlocutory injunction by Governor.
Certificate of E. O. Locke, Clerk, of mailing notices.
Opinion and order for interlocutory injunction.
Copy of entry in the minutes of said court of order for interlocutory injunction.
Order denying motion to dismiss.
Interlocutory injunction.
Petition for appeal.
Assignment of errors.
Order allowing appeal.
Original citation.
Bond for appeal.
Stipulation as to papers and portions of record to be incorporated into transcript of record on appeal.

CHARLES M. COOPER,
CHARLES P. COOPER,
JAMES J. G. COOPER,
Counsel and Solicitors for Complainants.
T. F. WEST,
Counsel and Solicitor for Defendants.

November 25th. 1913.

(Endorsed:) Stipulation as to Making Record. Filed Nov. 26th, 1913, E. O. Locke, Clerk.

90 In the District Court of the United States for the Southern District of Florida. In Chancery.

UNITED STATES OF AMERICA,
Southern District of Florida, ss:

I, Eugene O. Locke, Clerk of the above entitled Court, do hereby certify that the foregoing pages number- from one (1) to 89 constitutes a true and correct copy of the following named papers:—
Bill of Complaint.
Application for interlocutory injunction, &c.
Restraining order.
Order setting case for hearing Sept. 18th. 1913.
Defendants' motion to dismiss.
Notice of hearing of application for interlocutory injunction.
Acknowledgment of service of notice of application for interlocu-

tory injunction by T. F. West, Attorney General and defendants' solicitor.

Acknowledgment of service of notice of application for interlocutory injunction, by Governor.

Certificate of E. O. Locke, Clerk of mailing notices.

Opinion and order for interlocutory injunction.

Copy of entry in the minutes of said court of order for interlocutory injunction.

Order denying motion to dismiss.

Interlocutory injunction.

Petition for appeal.

Assignment of Errors.

Order allowing appeal.

Original citation.

Bond of appeal.

Agreement that answer will not have to be filed pending appeal.

Stipulation as to papers and portions of record to be incorporated into transcript of record on appeal.

which said original papers are on file in my office and a part of the record in the case of Ven Deman and Lewis Company et al. against J. W. Rast Tax Collector, et al.

In Witness Whereof, I have hereunto set my hand and official seal at Jacksonville, Florida, in said district this 12th day of December A. D. 1913.

[Seal District Court of the United States, Southern District of Florida.]

EUGENE O. LOCKE, *Clerk.*

Endorsed on cover: File No. 23,978. S. Florida. D. C. U. S. Term No. 318. John W. Rast, Tax Collector for Duval County, State of Florida, et al., appellants, vs. Van Deman and Lewis Company, The Harkisheimer Company, J. S. Pinkussohn Cigar Company, et al. Filed December 26th, 1913. File No. 23,978.

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SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1914.

No. 318.

JOHN W. RAST, Tax Collector for Duval County, State of Florida, *et al.*,

Appellants,

vs.

VAN DEMAN AND LEWIS COMPANY, THE HARKISHEIMER COMPANY, J. S. PINKUSSOHN CIGAR COMPANY,

Appellees.

BRIEF FOR APPELLANTS.

I. STATEMENT OF THE CASE.

This is an appeal from an interlocutory order made in the District Court of the United States for the Southern District of Florida, restraining the appellants, as Tax Collectors of each of the counties of the State of Florida, and all of the State Attorneys, County Solicitors and Prosecuting Attorneys in all of the Criminal Courts of the State, and all persons acting by, through or under

them, or by their authority, or the authority of any of them, and all other persons who may act in any of said offices, or in the place or stead of any of said appellants, from taking any action or proceeding looking to the enforcement of the provisions of the State statute imposing a license tax upon each and every person, firm or corporation, who shall offer with merchandise, bargained or sold in the course of trade, any coupon, profit-sharing certificate, or other evidence of indebtedness or liability which is redeemable in premiums.

Inasmuch as the interlocutory order sought and procured operated to suspend or restrain the enforcement of a statute of the State of Florida, the application for such order was presented to three Federal Judges, and heard by them, in compliance with the provisions of Section 266 of The Judicial Code of the United States.

An order was made restraining the said officers from the enforcement of the statute, and an appeal was thereupon taken direct to this court, as authorized by the Federal statute above referred to.

The statute complained of, the enforcement of which was enjoined, is a portion of Section 35 of Chapter 6421, Laws of Florida, which is in the following language:

> "Section 35. Merchants, Druggists and Storekeepers, shall pay a license tax as follows:
>
> For the first one thousand ($1,000.00) dollars or fraction of one thousand dollars of stock of merchandise, three ($3.00) dollars in each county and for each place of business, and one and one-half ($1.50) dollars for each additional thousand or fraction thereof; but dealers in merchandise at wholesale only, shall pay a license tax of one and one-half

($1.50) dollars for each one thousand ($1,000.00) dollars of their stock of merchandise. Provided, That the words "stock of merchandise" shall be held to mean the cash value of the merchandise or goods on hand and not the amount of capital stock invested in the business; Provided further, That any merchant keeping sewing machines in stock for sale in the same manner as other merchandise shall not be taxed as a sewing machine agent or dealer.

"Provided further, That each and every person, firm or corporation, who shall offer with merchandise bargained or sold in the course of trade any coupon, profit-sharing certificate, or other evidence of indebtedness or liability, redeemable in premiums, shall pay annually a State license tax of five hundred dollars ($500.00) and a County license tax of two hundred and fifty ($250.00) dollars in each and every county in which said business is conducted or carried on, and if more than one place of such business shall be operated by any person, firm or corporation, a separate State and County license shall be taken out for each such place; and no person, firm or corporation shall offer with merchandise, bargained or sold as aforesaid, any coupon, profit-sharing certificate or other evidence of indebtedness or liability, redeemable by any other person, firm or corporation than the one offering the same without paying the above license for each other person, firm or corporation who may redeem the same. The license prescribed in this section shall be in addition to other licenses prescribed by this Act. Any person violating any of the provisions of this section, whether acting for himself or as the agent of another, shall on conviction thereof be punished by fine not exceeding one thousand ($1,000.00) dollars or by imprisonment in the county jail not exceeding six months," etc.

The procedure for the enforcement of the payment of license taxes is provided for in Section 59 of this Chapter, as follows:

> "The payment of all license taxes shall be enforced by the seizure and sale of the property by the Tax Collector, or in case of State license taxes payable either to the State Treasurer or Comptroller, by the State Treasurer or Comptroller, as the case may be, and it is hereby made the duty of the Tax Collector and County Judge to report to the Comptroller and State Attorneys any violation of this Act."

It is averred in appellees' bill of complaint and contended by them that the statute imposing license taxes contravenes and violates certain enumerated provisions of the Constitution of the State of Florida, the commerce clause of the Constitution of the United States, the Fourteenth Amendment to the Constitution of the United States, and various other provisions of the Federal Constitution referred to in the bill of complaint.

The prayer of the bill of complaint, in so far as it is sought to restrain the officers named from proceeding to enforce the provisions of the statute complained of, is as follows:

> "That each of said defendant Tax Collectors hereinabove named, as such Tax Collector, and each of said defendant State's Attorneys, hereinabove named, as such State Attorney, and each of said defendant County Solicitors, hereinbefore named, as such County Solicitor, and each of said defendant Prosecuting Attorneys, hereinbefore named, as such prosecuting attorney, and all persons, acting by, through or

under them or by their authority or the authority of any of them, and all other persons who may act in any of said offices or in place or stead of any of said defendants or under or by virtue of any of said provisions of said section 35 of said statute of the State of Florida, herein complained of, be restrained and enjoined by the restraining order of this Honorable Court, or that may be granted by your Honor, and by an interlocutory injunction out of and from this Honorable Court or injunction during the pendency of this suit and by permanent and perpetual injunction from and issuing out of this Honorable Court, and that complainants and each of them be granted and have any and all proper writs of injunction, accordingly, restraining and enjoining them and each and every of them, from collecting or attempting to collect from said complainants or any of them, or from any person, firm or corporation similarly situated said license taxes or any of them, or any part thereof, mentioned or provided for in Section 35 in said statute of the State of Florida for or because of or on account of offering, giving, selling or delivering with merchandise or using any coupon, slip, certificate, or other evidence of indebtedness or liability or like device or token, and from levying on, seizing, selling or interfering with any property of said complainants or any of them or any other person similarly situated, for the purpose of collecting said license taxes or any of them, or any part thereof, and from causing, beginning or instituting any prosecution, information, indictment, arrest, imprisonment or any other criminal proceeding or carrying on or prosecuting any such that may be instituted or begun, after the filing of this bill of complaint, or the making or issuance of any such restraining order or injunction herein or on any indictment or information

found or filed thereafter, for the purpose of collecting or causing to be paid said license taxes or any of them, or any part thereof, or of punishing, fining or imprisoning or causing the same to be done of said complainants, or any of them, or of any other person, firm or corporation similarly situated and from causing any of said things to be done and from taking any other action or in any other manner interfering with the complainants or any of them, or any other person, firm or corporation similarly situated, or their respective businesses, by reason or because of said license taxes and said provisions of said statute hereinabove mentioned. That complainants may have any proper order to the defendants to show cause herein why an interlocutory injunction or an injunction during the pendency of this suit should not isssue as prayed for herein and all other suitable or proper orders in the premises and in the prosecution of this suit." (Transcript of Record, pp. 23-24.)

The further prayer is that the statute and all enactments and provisions thereof providing or imposing a fine or imprisonment for any violation thereof may be declared and decreed to be unconstitutional, illegal, and void; and for general relief.

Upon a hearing of this application, it was ordered that the interlocutory injunction issue as prayed in and by said bill of complaint. (Transcript of Record, pp. 38 to 44.)

II. ARGUMENT.

1. The case presented is not within the cognizance of the equity jurisdiction of the Federal Courts.

From the great number of grounds of attack made upon

this statute, one is led to suspect that appellees have little confidence in any single one of them. It is hardly probable that a statute of this kind, designed, it may be, both for regulation and revenue purposes, could be drafted so as to contravene all the various constitutional provisions enumerated in the bill of complaint.

Before taking up the question of the constitutional validity of the statue, however, it is essential that certain preliminary questions be considered.

We respectfully urge that a court of equity has no jurisdiction to hear and determine this case, for the following reasons:

2. No Ground for Equitable Interposition is Shown to Exist as Against the Tax Collectors.

The officers sought to be enjoined are the Tax Collectors of each of the counties in the State of Florida, and each of the prosecuting officers in all of the courts of the State of Florida having jurisdiction in criminal cases.

The Tax Collectors have imposed upon them the duty of collecting the tax. If the tax is not paid voluntarily, they proceed under the provisions of Section 59 of Chapter 6421, to enforce collection of it, by the seizure and sale of the property of the person engaged in the occupation upon which the tax is laid.

The prosecuting officers have nothing to do with the collection of this tax. They proceed to enforce the statute by criminal prosecution. As to them the statute is a criminal statute, and is enforced by them in precisely the same manner as all other criminal statutes are enforced

If a person, firm or corporation offers with merchandise bargained or sold in the course of trade any coupon, profit-sharing certificate, or other evidence of indebtedness or liability, redeemable in premiums, without having first paid the license tax imposed by the statute, it becomes the duty of the Tax Collector to enforce payment of such taxes by seizure and sale of the property of such person. It appears from the bill of complaint in this case that the property which the Tax Collectors are restrained from seizing is personal property.

The highest appellate court in the State of Florida, the Supreme Court, has settled the question there, that a court of equity will not interfere to restrain by injunction a seizure and sale of property in a case of this kind; and this suit could not, therefore, be maintained in a court of equity of the State of Florida.

In the case of Odlin vs. Woodruff, County Tax Collector, 31 Fla. 160, the complainant, who was an attorney-at-law, sought to enjoin in a court of equity the tax collector of the county, in which he was engaged in the practice of his profession, from the seizure and sale of his personal property, to enforce the payment of a license tax imposed upon the occupation in which he was engaged. The statute there was assailed as being obnoxious to the provisions of the Constitution of the United States..

The Supreme Court of the State, in passing upon the question, held:

> "That the court of equity has no jurisdiction to interfere by injunction to restrain trespass upon personal property, except in rare cases where the property trespassed upon or taken has some peculiar in-

trinsic value to the owner that could not be compensated in money, and that the remedy is at law, is well settled in this State as elsewhere. Baldwin vs. Tucker, 16 Fla. 258, and authorities there cited.

"If the contention of the appellant in his bill is true, that the statute imposing this tax upon his exercise of his profession as a lawyer is unconstitutional, then the levy by the tax collector upon his goods for the enforcement of such tax would amount to a trespass, for the redress of which there is ample remedy at law; and he has no standing in a court of equity. The demurrer to his bill was, therefore, properly sustained, and the dismissal of the bill properly followed."

In the case of Florida Packing and Ice Company vs. Carney, Tax Collector, 49 Fla. 293, the complainant sought to enjoin the county tax collector from seizing, levying upon, holding, advertising or selling any of his property to enforce the payment of a license tax imposed upon the occupation in which it was engaged. It appears in this case that complainant's property, which it sought to protect from seizure and sale, was personal property. In considering the case, the Supreme Court again said:

"The decision of the court below was substantially upon the merits of the controversy, when in fact it should have abstained from any consideration of the merits and should have sustained the demurrer and dismissed the bill upon the first ground thereof alone, *viz*: that there was no equity in the bill, without passing upon the merits of the case. This court in divers cases has settled the rule beyond further controversy, that a court of equity will never interfere to restrain by injunction a levy upon, and

sale of *personal* property, unless the same is of such peculiar and intrinsic value to the owner that its loss cannot be compensated adequately in damages, and that the remedy in such cases is at law by an action of trespass, or other appropriate remedy in the courts of law. And it has further been settled by repeated decisions here that where it is apparent to the appellate court upon the face of a bill that it does not state a case cognizable in a court of equity, it will dismiss such bill for want of equity, even though the question of equitable jurisdiction was not presented by the pleading or raised before the appellate court."

In the case of Metcalf vs. Martin, County Tax Collector, 54 Fla. 531, the complainant sought to restrain the tax collector from the seizure and sale of its property for the purpose of enforcing the payment of the license tax imposed upon the occupation in which it was engaged. It appears in this case that the complainant, which was engaged in the liquor business, had refused to pay its license tax, and the tax collector had seized and threatened to sell its equipment, fixtures, etc.

In considering this case, the court said:

"A court of equity should not entertain a bill for an injunction against a tax collector who threatens to seize and sell personal property except in rare cases where the property is peculiarly valuable and cannot be compensated adequately in damages. This is true even if the officer is acting without lawful authority, as such seizure is a mere trespass remediable by action at law." (Citing cases.)

"Where an injunction is prayed on the ground of irreparable injury the bill of complaint should allege facts to enable the court to determine whether the

injury will be irreparable. A mere general allegation that the injury will be irreparable is not sufficient. When the facts alleged do not show that irreparable injury will be sustained an injunction should not be granted." (Citing cases.)

"Where it is apparent to an appellate court that a bill of complaint does not state a case cognizable in a court of equity, it is the duty of the court to notice the defect, even though the question of equitable jurisdiction is not presented in the pleading or otherwise called to the attention of the trial or appellate court." (Citing cases.)

"The facts alleged to show that irreparable injury will be sustained if injunction does not issue to restrain the sale of barroom fixtures are that complainant's business of selling liquor in a particular building will be entirely broken up and destroyed and that the barroom fixtures can only be replaced at great cost and by ordering from a great distance and after long delay, and that the same are absolutely essential to the business. This does not show an injury will result which cannot be fully compensated in damages by an action at law; but the facts rather tend to show such compensation will be adequate and complete for any loss complainant might sustain even if the action of the tax collector be illegal. Under these circumstances the bill should have been dismissed by the court even though no demurrer was interposed to the bill. There is no equity shown to decree the complainant exempt from the payment of the license tax demanded by the tax collector."

These cases, we think, clearly show that a court of equity has no jurisdiction to hear and determine this case. It is certain that if any one of the appellees had undertaken to restrain the appellants, or any one of them, that

a court of equity would hold that it had no jurisdiction to entertain the suit; and the fact that a number of persons may be interested cannot change this principle, because there is no joint interest in their several complaints. It may be that scores of persons or firms engaged in the occupation, upon which this license tax is imposed, would be affected by the enforcement of the statute, but its enforcement as to any single one of them could not affect any other one or more of them.

The rule laid down by the Supreme Court of the State of Florida is the general rule on the subject. And, although the statute complained of may be unconstitutional, which we of course do not concede, but deny, this alone is not sufficient to entitle a party to relief by injunction against proceedings in compliance with the terms of such statute.

This court has held, in a case similar to the Florida cases above referred to, that:

> "It is settled that the mere fact that a law is unconstitutional does not entitle a party to relief by injunction against proceedings in compliance therewith, but it must appear that he has no adequate remedy by the ordinary processes of the law or that the case falls under some recognized head of equity jurisdiction."
>
> Cruickshank v. Bidwell, 176 U. S. 73, at p. 80.

This is peculiarly true in considering the validity of a State taxing statute.

The general rule on this subject is expressed by Judge Cooley as follows:

"To entitle a party to relief in equity against an illegal tax, he must by his bill bring his case under some acknowledged head of equity jurisdiction. The illegality of the tax alone, or the threat to sell property for its satisfaction, cannot, of themselves, furnish any ground for equitable interposition. In ordinary cases a party must find his remedy in the courts of law, and it is not to be supposed he would fail to find one adequate to his proper relief."

Cooley on Taxation, p. 936
Cooley on Taxation (3rd Ed.) 1411-12.

It is settled in this Court that:

While an unconstitutional tax may confer no right, impose no duty, and support no obligation, the trespass resulting from proceedings to collect such void tax cannot be restrained by injunction, where irreparable injury or other ground for equitable interposition is not shown to exist.

Shelton v. Platt, 139 U. S. 591.
Allen v. Pullman's Palace Car Co., 139 U. S. 658.
Pacific Express Co., v. Seibert, 142 U. S. 339.
Pittsburgh &c. Railway Company v. Board of Public Works, 172 U. S. 32.
Arkansas Building & Loan Association v. Madden, 175 U. S. 269.

The rule announced here, with regard to statutes imposing taxes, applies in this case.

A statute may perform the double function of regulating the business under the police power, and of producing revenue, if authorized by the law of the State, and this is such a statute.

Harrison v. Kersey, 67 Fla. 24.
Bradley v. City of Richmond, 227 U. S. 477.
Gundling v. Chicago, 177 U. S. 183.

We respectfully submit that there is nothing in appellees' bill of complaint to take this case out of the class controlled by the general rule laid down in the authorities; and certainly a different rule from that applied by the courts of Florida to others occupying precisely the same position should not be adopted by a Federal Court in this case, because a number of persons are permitted to come in together and submit separate and distinct issues as to each of them, in which there is no joint interest, in a single proceeding as is done here.

The averments of the bill of complaint do not show irreparable injury to the appellees, or any of them, under the general rule on the subject in cases of this character.

Metcalf Co. v. Martin, *supra.*

The question of what is an adequate remedy at law in the class of cases cited from the Florida Supreme Court may suggest itself.

It is not incumbent upon us to answer this question here, because the burden of showing that there is no such remedy rests upon him who comes into a court of equity. The State Court has said that, in such cases, equity has no jurisdiction because an adequate remedy at law exists.

After the decision by the Supreme Court of the State in the case of Florida Packing & Ice Co. vs. Carney, *supra*, the plaintiff brought a suit at law against the defendant as Tax Collector of Marion County for the recovery of the amount of damages sustained by it as the result of the alleged improper and unlawful seizure of its property by the Tax Collector in an effort to collect the license tax claimed to be due by the plaintiff. When the case reached

the Supreme Court it was held that an action of that kind for that purpose would lie.

Florida Packing & Ice Co. vs. Carney, 51 Fla. 190.

One remedy, therefore, is an action at law against the officer. It might also be suggested that a suit in trover and conversion, or of replevin, would also lie against a purchaser of the property so seized and sold.

(3) A COURT OF EQUITY HAS NO JURISDICTION TO RESTRAIN THE PROSECUTING OFFICERS NAMED, BECAUSE ANY ACTION TAKEN BY THEM LOOKING TO THE ENFORCEMENT OF THE PROVISIONS OF THIS STATUTE IS A CRIMINAL PROCEEDING, AND TO ENJOIN THEM IS TO ENJOIN THE STATE FROM PROCEEDING IN ITS OWN COURTS.

The portion of the statute prescribing and imposing penalties for engaging in the business defined in the statute, is in the following language:

> "Any person violating any of the provisions of this Section, whether acting for himself or as the agent of another, shall on conviction thereof be punished by fine not exceeding one thousand ($1,000.00.) dollars or by imprisonment in the county jail not exceeding six months."

The prayer of the bill of complaint with reference to said prosecuting officers is in the following language:

> "and each of said defendant States Attorneys, hereinabove named, as such State Attorney, and each of said defendant County Solicitors, hereinabove named,

as such County Solicitor, and each of said defendant Prosecuting Attorneys, hereinbefore named, as such prosecuting attorney, and all persons acting by, through or under them or by their authority or the authority of any of them, * * * and from causing, beginning or instituting any prosecution, information, indictment, arrest, imprisonment, or any other criminal proceeding or carrying on or prosecuting any such that may be instituted or begun, after the filing of this bill of complaint, or the making or issuance of any such restraining order or injunction herein or on any indictment or information found or filed thereafter for the purpose of collecting or causing to be paid said license taxes or any of them, or any part thereof, or of punishing, fining or imprisoning or causing the same to be done of said complainants, or of any of them, or of any other person, firm or corporation similarly situated and from causing any of said things to be done and from taking any other action or in any other manner interfering with the complainants or any of them, or any other person, firm or corporation, similarly situated, or their respective businesses, by reason or because of said license taxes and said provsions of said statute hereinabove mentioned. That complainants may have any proper order to the defendants to show cause herein why an interlocutory injunction or an injunction during the pendency of this suit should not issue as prayed for herein and all other suitable or proper orders in the premises and in the prosecution of this suit." (Transcript of Record, pp. 23-24.)

It is provided by the Constitution of the State of Florida that all prosecutions shall be conducted in the name and by the authority of the State.

Constitution of Florida, Article V, Section 37.

The Supreme Court of the State of Florida, in discussing the design and purpose of this provision of the Constitution, used this language:

> "This clause, which is to be found in most if not all the Constitutions of the States which took part in the formation of the government, was inserted to exclude the idea that any other, either local authority or foreign power, should exercise this authority of prosecuting for crimes under State laws. *It was to assert the sovereignty and supremacy of the State in matters of this kind.*" (Italics ours.)
>
> Ex Parte Nightengale, 12 Fla. 274.

This court in considering the question of the power of a court of chancery to restrain criminal proceedings, in the case of In re. Sawyer, 124 U. S. 200, at p. 211, said:

> "The modern decisions in England, by eminent equity judges, concur in holding that a court of chancery has no power to restrain criminal proceedings, unless they are instituted by a party to a suit already pending before it, and to try the same right that is in issue there. (Citing cases.)
>
> "Mr. Justice Story, in his Commentaries on Equity Jurisprudence, affirms the same doctrine. Story Eq. Jur. sec. 893. And in the American courts, so far as we are informed, it has been strictly and uniformly upheld, and has been applied alike whether the prosecutions or arrests sought to be restrained arose under statute of the State, or under municipal ordinances. (Citing cases.)"

In enjoining the State's prosecuting officers from prosecuting for violations of this statute, the court must pro-

ceed in violation of the principle stated in the foregoing authorities, and must restrain proceedings in the name of the sovereign State looking to the enforcement or testing, in its own courts, of a statute duly adopted by the legislative branch of the State government.

I submit that such proceeding is unauthorized, that it is contrary to the whole scheme of our government, and that it was never intended that any such authority should be exercised by the Federal Courts.

This court in considering this question at length, in the comparatively recent case of Fitts v. McGhee, 172 U. S. 516, at pp. 531-2, said:

> "It remains only to consider the case so far as the final decree assumes to enjoin the officers of the State from instituting or prosecuting any indictment or criminal proceedings having for their object the enforcement of the statute of 1895. We are of opinion that the Circuit Court of the United States, sitting in equity, was without jurisdiction to enjoin the institution or prosecution of these criminal proceedings commenced in the State Court. This view is sustained by In re Sawyer, 124 U. S. 200, 209, 210. It was there said: 'Under the Constitution and laws of the United States, the distinction between common law and equity, as existing in England at the time of the separation of the two countries, has been maintained, although both jurisdictions are vested in the same courts. Fenn v. Holme, 21 How. 481, 484-487; Thompson v. Railroad Companies, 6 Wall. 134; Heine v. Levee Commissioners, 19 Wall. 655.' Again. 'The office and jurisdiction of a court of equity, unless enlarged by express statute, are limited to the protection of rights of property. It has no jurisdiction over the prosecution, the punishment or the pardon of

crimes and misdemeanors, or over the appointment and removal of public officers. To assume such a jurisdiction, or to sustain a bill in equity to restrain or relieve against proceedings for the punishment of offenses, or for the removal of public officers, is to invade the domain of the courts of common law, or of the executive and administrative departments of the government.' At the present term of the court, in Harkrader v. Wadley, 172 U. S. 148, 169, 170, we said: 'In proceeding by indictment to enforce a criminal statute the State can only act by officers or attorneys, and to enjoin the latter is to enjoin the State.' Again: 'Much more are we of opinion that a Circuit Court of the United States, sitting in equity in the administration of civil remedies, has no jurisdiction to stay by injunction proceedings pending in a State court in the name of a State to enforce the criminal laws of such State.' Undoubtedly, the courts of the United States have the power, under existing legislation, by writ of *habeas corpus* to discharge from custody any person held by State authorities under criminal proceedings instituted under State enactments, if such enactments are void for repugnancy to the Constitution, laws or treaties of the United States. But even in such case we have held that this power will not be exercised, in the first instance, except in extraordinary cases, and the party will be left to make his defense in the State court. Ex parte Royall, 117 U. S. 241; New York vs. Eno, 155 U. S. 89; Whitten v. Tomlinson, 160 U. S. 231; Baker v. Grice, 169 U. S. 284."

The case of Ex parte Young, 209 U. S. 123, is differentiated from this case in that it comes squarely within the exception to the general rule, as announced in the case of In re Sawyer, *supra*, at p. 211, as follows:

> "The modern decisions in England, by eminent equity judges, concur in holding that a court of chancery has no power to restain criminal proceedings, *unless they are instituted by a party to a suit already pending before it, and to try the same right that is in issue there.*" (Italics ours.)

I would call attention also to the following language used in the case of Fitts vs. McGhee, *supra*, at p. 532:

> "That the defendants may be frequently indicted constitutes no reason why a Federal Court of equity should assume to interfere with the ordinary course of criminal procedure in a State court."

In the instant case there is no suggestion, and there could be none, that those violating the statute would be "frequently indicted." All that could be done would be to indict each of them one time. What probably would be done would be to indict one of them one time In this way the law would be tested and the question settled in the State courts in the simplest manner and within a very short time.

If the statute is in fact obnoxious to any of the provisions of the State or Federal Constitution, upon arrest for a violation of its provisions, the persons arrested could sue out a writ of *habeas corpus* in the Supreme Court of the State, and have the question of the validity of the statute finally settled by that Court in the shortest possible time.

Constitution of Florida, Article V, Section 5.

It can hardly be denied that there is an adequate remedy at law for appellees as against any action taken by

the State's prosecuting officers, and that as to them this suit should be dismissed.

We come now to consider the principal question on its merits, that is to say, the question of the constitutional validity of the statute.

4. A PART OF THE BUSINESS CONDUCTED BY THE APPELLEES BEING WHOLLY INTRASTATE, THE ENFORCEMENT OF THE STATUTE CANNOT VIOLATE THE COMMERCE CLAUSE OF THE FEDERAL CONSTITUTION.

We do not concede that any part of the business of appellees as conducted is interstate commence, but if it should be so held, to incidentally or indirectly affect it would not of necessity violate the commerce clause of the Federal Constitution.

But, be that as it may, it is apparent from the averments of the bill of complaint that there is a legitimate field for the operation of this statute without in any wise affecting interstate commerce. It appears that some of the business of the appellees is conducted wholly within the State of Florida, that the coupons, slips, certificates or tokens given with sales of merchandise made within the State of Florida are also redeemed within the State of Florida.

Paragraph IV of the bill of complaint is as follows:

> "Complainants further allege that there are divers forms and methods of use of coupons, slips, certificates or tokens, in connection with the sale of merchandise used by merchants of the State of Florida,

substantially in similar form to those mentioned above, in which above-mentioned cases the payment or redemption in premiums is made or given outside of the State of Florida, but in the class of cases now being stated the payment or redemption is made by the Florida merchant, in the State of Florida, sometimes by the delivery of some valuable article of merchandise; sometimes by the payment of cash or the allowance of credit on account of purchase, being in the nature of a discount or for or on account of a certain amount having been purchased by the merchant by the customer. These certificates or tokens in addition to being in the form of coupons or certificates, as above mentioned, sometimes are in the form of a cash register slip or memorandum and are in various other forms." (Transcrip of Record, p. 10.)

As to that portion of the business of the appellees conducted, as outlined in this paragraph, there can be no doubt that this tax may be legally imposed.

In the case of Osborne v. Florida, 164 U. S. 650, in considering a license tax statute of the State of Florida, this court held, in affirming an opinion of the Supreme Court of the State of Florida, that one conducting a business partly interstate and partly intrastate should not be held immune from taxation by the State on that portion of his business wholly intrastate because a portion of the business so conducted was interstate. In this case it was conceded that ninety-five per cent. of the business of plaintiff in error was interstate and that only five per cent. was intrastate.

The presumption is that the Legislature intended to tax only that which it constitutionally might tax.

Singer Sewing Machine Co. v. Brickell, 233 U. S. 304.

It has been further held by this court that it is not within the power of the parties by the form of their contract to convert what is exclusively a local business, subject to State control, into an interstate commerce business protected by the commerce clause of the Federal Constitution.

Browning v. City of Waycross, 233 U. S. 16.

It is settled here that a State may adopt measures of a reasonable character in the interest of health, safety, morals and welfare of its people, although interstate comference may incidentally or indirectly be involved and affected.

The Minnesota Rate Cases, 230 U. S. 205.
Savage v. Jones, 225 U. S. 501.
Plumley v. Massachusetts, 155 U. S. 461.

5. THE STATUTE IS NOT IN CONTRAVENTION OF THE PROVISIONS OF THE FOURTEENTH AMENDMENT TO THE FEDERAL CONSTITUTION.

It will be noted that the court below held the statute to be invalid and uninforceable because in violation of the provisions of the Fourteenth Amendment to the Federal Constitution.

The principal authority relied upon by counsel for appellees in presenting the case to the court below, and by the court in its written opinion, is the case of Little *et al.* vs. Tanner, Attorney General, *et al.*, 208 Fed. 605. This is a case from the Eastern District of the State of Washington, recently decided, and involves the question of the constitutional validity of a statute passed by the legisla-

ture of the State of Washington, similar in some respects but materially different in others from the statute of the State of Florida, as will appear by a comparison of the two statutes.

It so happens that the parties objecting to the enforcement of the Washington statute did not make their complaint comprehensive enough as to parties defendant to tie the hands of all the State officers whose duty it is to enforce the payment of the tax imposed or prosecute for a failure to pay it, and, as a result, the question of the validity of the statute was also presented to the State courts for consideration and decision. When the case reached the Supreme Court of the State, that court, reversing the judgment of the lower court, held the statute to be valid and a legitimate exercise of the police power of the State.

State v. Pitney, — Wash. —, 140 Pac. 918.

It may be that the weight of judicial authority on this subject is not in accord with the views expressed in this decision, but I submit that the judgment of the Supreme Court of the State, holding the statute to be valid, tends substantially to weaken the force and weight of the decision of the Federal Judges, on the same question, which, as we have stated, is the principal authority for the decision from which this appeal is taken, and, may I submit further here, that the attitude of this State court is in harmony with the spirit and substance of the thought made prominent in the addresses of the great leaders of the bar of this country at the last meeting of the American Bar Association, namely, that principle rather that precedent should be the guide in the consideration and determination of questions of this character.

There are, however, respectable authorities holding statutes prohibiting the business, or imposing license taxes upon merchants using trading stamps, as valid and enforceable.

Lansburg v. District of Columbia, 11 App. D. C. 512.
Humes v. Ft. Smith, 93 Fed. 857.
Wilder v. Quebec, Rap. Jud. Quebec, 25 C. S. 128.
State v. Pitney, *supra*.

The great number of cases on the subject in which acts of the legislature or ordinances of municipalities imposing license taxes upon, or prohibiting entirely the trading stamp business, show that there is a deep-seated conviction of the necessity, and a wide-spread demand on the part of the people of the country for such legislation. This is further evidenced by numerous resolutions of chambers of commerce, boards of trade, merchants' associations, and other public bodies, and the several bills that have been introduced in the Congress of the United States on this subject.

If debates and records of Congress may be resorted to for the purpose of showing that which prompted legislation (Tap Line Cases, 234 U. S. 1; Loewe v. Lawlor, 208 U. S. 274), then it may be ascertained that the wide-spread public demand on the part of the people of the country for legislation of this kind is making itself felt, not only in the legislative bodies of the municipalities and of the States, but in the Congress of the United States. H. R. 15958, introduced by the leader of the dominant party in Congress at this time, is similar in its general tenor and effect, although more limited in the class to which it applies than the Florida statute on the subject,

but, generally speaking, the principle involved is the same.

In view of this condition there would seem to be no warrant for the courts to set up their judgments against the judgment of the legislative authority of the country for the necessity of legislation regulating the conduct of this occupation.

That the courts may take notice of the wide-spread demand for legislation on this subject is well settled here.

In considering the question of the validity of a statute of a character somewhat similar to this statute, this court in the case of Otis v. Parker, 187 U. S. 606, at p. 609, said:

> "Even if the provision before us should seem to us not to have been justified by the circumstances locally existing in California at the time when it was passed, *it is shown by its adoption to have expressed a deep-seated conviction on the part of the people concerned as to what that policy required.* (Italics ours.) If the State thinks that an admitted evil cannot be prevented except by prohibiting a calling or transaction not in itself necessarily objectionable, the courts cannot interfere, unless, in looking at the substance of the matter, they can see that it 'is a clear unmistakable infringement of rights secured by the fundamental law.' Booth v. Illinois, 184 U. S. 425, 429. No court would declare a usuary law unconstitutional, even if every member of it believed that Jeremy Bentham had said the last word on that subject, and had shown for all time that such laws did more harm than good. The Sunday laws, no doubt, would be sustained by a bench of judges, even if every one of them thought it superstitious to make any day holy. Or, to take cases where opinion has moved in the opposite direction, wagers may be declared illegal without the aid of

statute, or lotteries forbidden by express enactment, although at an earlier day they were thought pardonable at least. The case would not be decided differently if lotteries had been lawful when the Fourteenth Amendment became law, as indeed they were in some civilized States. See Ballock v. State, 73 Maryland 1."

In a more recent case of Central Lumber Company v. South Dakota, 226 U. S. 157, at p. 160, this court said:

"If the Legislature shares the now prevailing belief as to what is public policy and finds that a particular instrument of trade war is being used against that policy in certain cases, it may direct its law against what it deems the evil as it actually exists without covering the whole field of possible abuses, and it may do so none the less that the forbidden act does not differ in kind from those that are allowed." (Citing cases.)

And further, at page 161:

"If the Legislature thought that that particular manifestation of ability usually came from great corporations whose power it deemed excessive and for that reason did more harm than good in their State, and that there was no other case of frequent occurrence where the same could be said, we cannot review their economics or their facts. *That the law embodies a wide-spread conviction appears from the decisions in other States.*" (Citing cases.) (Italics ours.)

In the case of Purity Extract Co. v. Lynch, 226 U. S. 192, at pp. 204-205, this court said:

"That the opinion is extensively held that a general prohibition of the sale of malt liquors, whether intoxicating or not, is a necessary means to the suppression of trade in intoxicants, sufficiently appears from the legislation of other States and the decision of the courts in its construction. (Citing cases.) *We cannot say that there is no basis for the wide-spread conviction.*" (Italics ours.)

6. THERE IS A JUST BASIS FOR THE CLASSIFICATION MADE BY THIS STATUTE.

The rules for testing this question are laid down by this court in the case of Lindsley vs. Natural Carbonic Gas Co., 220 U. S. 61, as follows:

"1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing it does not rest upon any reasonable basis but is essentially arbitrary."

In holding that a statute of this kind is within the legislative power of a State, the Supreme Court of Washington, in the case of State vs. Pitney, *supra*, said:

> "it follows then that if a state of facts could exist which would justify the legislature in forbidding the use of trading stamps, it must be presumed to have actually existed. What state of facts might reasonably have prompted the legislature to forbid the use of trading stamps in connection with the sale of merchandise. It might reasonably be supposed or presumed that the legislature believed that the use of these stamps would encourage indiscriminate and unnecessary purchasing by people ill able to indulge in any extravagance. Or suppose that the legislature believed that the use of these stamps was practically forced upon certain merchants without any practical benefit resulting thereon, and thus they were compelled to pay 3½% upon their gross sales for the use of the stamps. The legislature might reasonably have believed that the stamp companies, in order to cause stamps to be used in a certain city, would contract with one merchant for their use, agreeing to pay him a per centage of the sums collected by them from other merchants, and then use the first contract so secured to force other merchants into using the stamps, or suffer loss of trade by failure so to do. In other words, that legitimate business was virtually coerced into paying tribute to the stamp company, a nonproducer of wealth or value."

Something of the character of the business of trading stamp companies and the evil sought to be remedied by the legislation on the subject may be seen from the decision of the Court of Appeals of the District of Columbia

in the case of Lansburg vs. District of Columbia, 11 App. D. C. 512, in which the statement is made, at page 531, that:

> "Their business is the exploitation of nothing more or less than a cunning device. With no stock in trade but that device and the necessary books and stamps and so-called premiums with which to operate it successfully, they have intervened in the legitimate business carried on in the District of Columbia between seller and buyer, not for the advantage of either, but to prey upon both. They sell nothing to the person to whom they furnish the premiums. They pretend simply to act for his benefit and advantage by forcing their stamps upon perhaps an unwilling merchant who pays them in cash at the rate of $5.00 per thousand. The merchant who yields to their persuasion does so partly in the hope of obtaining the customer of another, and partly through fear of losing his own if he decline."

And further, at page 532:

> "There is not a shadow of rational foundation for the stamp company's claim that it confers a benefit upon buyers by procuring for them an actual discount. If its business were to continue and its contract faithfully performed, its inevitable result would be as in all necessary interventions of third persons or 'middlemen,' between merchants and consumer, and increase the cost to the latter."

While not in the record in this case, it is nevertheless true that the retail merchant is not opposing this statute and is not making the fight to overthrow it. The fight

is being made largely—perhaps I would be wholly within the bounds of truth to say entirely—by the coupon companies and wholesale dealers who are profiting by business sustained and supported by the consumer who is, in addition to paying for the merchandise in which the coupons are placed—frequently actual necessities—also paying the expenses incident to the carrying on of the coupon business and the price of the premiums, which he is frequently misled into believing are being given to him gratis, and which he would not purchase except under cover of the business upon which this tax is imposed, and which are frequently of little and probably of no value to him.

It has been said that:

> "The subjects for the exercise of the police power are, first, preservation of the public health; second, preservation of the public morals; third, regulation of business enterprises; fourth, regulation of civil rights of individuals, and, fifth, the general welfare and safety of the citizens."
>
> Commonwealth v. Reinecke Coal Mining Co., (Ky.) 79 S. W. 287.

This court has said:

> "It may be said in a general way that the police power extends to all the great public needs. Camfield v. United States, 167 U. S. 518. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare."
>
> Noble State Bank v. Haskell, 219 U. S. 104, at p. 111.

The learned author of Freund on Police Power has laid down this rule:

> "From the mass of the decisions, in which the nature of the power has been discussed, and its application either conceded or denied, it is possible to evolve at least two main attributes or characteristics which differentiate the police power; it aims directly to secure and promote the public welfare, and it does so by restraint and compulsion. It will be necessary to offer a few general observations upon these two points, bearing in mind that it is not by general statements, but only by a detailed examination of statutes and decisions that the power can be fully understood and defined. Such an examination will show what has been done and what has been approved by experience, what has been attempted and has failed, what has been surrendered, and what is aimed at and in process of being accomplished. It will reveal the police power not as a fixed quantity, but as the expression of social, economic and political conditions. As long as these conditions vary, the police power must continue to be elastic, i. e., capable of development."
>
> Freund Police Power, Sec. 3.

If the police power extends to all the great public needs, and may be exercised for the general welfare and safety of the citizens of a State, and must continue to be elastic and capable of development, can it be said now, in the light of the "maxim of constitutional law that a Legislature is presumed to have acted within constitutional limits, upon full knowledge of the facts, and with the purpose of promoting the interests of the people as a whole" (Atchison, Topeka, etc., Railroad v. Mathews, 174 U. S. 96, at p. 104),

that the legislature of Florida transcended its powers in imposing a license tax upon an occupation which must of necessity, in its ordinary conduct, place unnecessary burdens upon all the citizens of the State and require that they in purchasing the necesaries of life shall also purchase the so-called premiums or prizes of the coupon companies in order to make possible a business for such companies, which exists, not of necessity nor for the public good, but solely for gain on behalf of those engaged in the business and at the expense of the public.

It is consistent with reason that this business as ordinarily conducted operates upon, and affects the public, as we have suggested; and,

> "This court will assume the existence at the time the statute was enacted of any state of facts that can reasonably be conceived and which will support a classification in a State statute attacked as denying equal protection of the law."
>
> Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61.

The legislature is primarily the judge of the necessity for legislation of this kind.

On this subject this court has held:

> "The legislature being familiar with local conditions is, primarily, the judge of the necessity of such enactments. The mere fact that a court may differ with a legislature in its views of public policy, or that judges may hold views inconsistent with the propriety of the legislation in question, affords no ground for judicial interference, unless the act in

question is unmistakably and palpably in excess of legislative power." (Citing cases.)

McLean v. Arkansas, 211 U. S. 539, at p. 547.

The court below held that there was no just basis for the classification made by the statute complained of; that it was an arbitrary selection of one merchant for the imposition of a "greater burden" than that imposed on others in the same calling and condition (Transcript of Record, p. 43).

As we have seen the principal case relied upon by the court below in the case of Little *et al.* v. Tanner, Attorney General, *et al.*, 208 Fed. 605. It is worthy of note that although the court held the statute to be in violation of the Federal Constitution, not a single case from this court was cited in support of the holding. All, except one, of the cases cited are from State courts, and most of them are cases in which the validity of municipal ordinances, and not State statutes, were considered.

It is settled here, and in Florida, that there is no limitation upon the power of the Legislature to determine what occupations shall be subjected to licenses and taxed, save those of the due process and equal protection clauses of the Fourteenth Amendment to the Federal Constitution.

Bradley v. City of Richmond, *supra.*
Ferguson v. McDonald, 66 Fla. 496.

It is also settled in Florida and here that a statute imposing a license tax is not invalid and unenforceable because unconstitutional, for the reason that other li-

cense or occupational taxes are imposed by other statutes upon the same occupation.

Afro-American Industrial & Benefit Association v. State, 61 Fla. 85.

Peninsular Industrial Insurance Co. v. State. 61 Fla. 376.

Peninsular Casualty Co. v. State (Fla.), not yet reported.

The Pullman Co. v. Knott, 235 U. S. 23.

If there is a reasonable basis for the classification made by this statute,—and, as we have seen, the appellees must carry the burden of showing that the classification made by the statute does not rest upon any reasonable basis, but is essentially arbitrary,—then the judgment from which this appeal is taken must be reversed. When the character of the business or occupation upon which this tax is imposed is considered, we believe it will appear that there is a clear, reasonable and substantial distinction on which to base a classification either under the police or taxing power of the State, between merchants using the coupons, profit-sharing certificates, and the like, in the manner defined in this statute, and merchants who do not use such coupons or profit-sharing certificates.

The fact that the statute may not affect all alike does not determine the question of constitutionality.

This court has held:

> "The Legislature, having the power of classification, has also the power to select the differences on which to base the classification. The State is not bound to rigid equality by the equal protection provision of the Fourteenth Amendment; classification

simply must not be exercised in clear and hostile discrimination between particular persons and classes."
Citizens Telephone Co. v. Fuller, 229 U. S. 322.

In the case of Atchison, Topeka, etc., Railroad v. Mathews, 174 U. S. 96, at p. 106, it was said:

"Indeed, the very idea of classification is that of inequality, so that it goes without saying that the fact of inequality in no manner determines the matter of constitutionality."

In the case of Quong Wing v. Kirkendall, 223 U. S. 59, in upholding as valid and constitutional a statute of the State of Montana imposing the payment upon all persons engaged in the laundry business other than the steam laundry business, with a proviso that it should not apply to women so engaged where not more than two women were employed, at page 62, this court said:

"A State does not deny the equal protection of the laws merely by adjusting its revenue laws and taxing system in such a way as to favor certain industries or forms of industry. Like the United States, although with more restrictions and in less degree, a State may carry out a policy, even a policy with which we might disagree. McLean v. Arkansas, 211 U. S. 539, 547; Armour Packing Co. v. Lacy, 200 U. S. 226, 235; Connolly v. Union Sewer Pipe Co., 184 U. S. 540, 562. It may make discriminations, if founded on distinctions that we cannot pronounce unreasonable and purely arbitrary, as was illustrated in American Sugar Refining Co. v. Louisiana, 179 U. S. 89, 92, 95; Williams v. Fears, 179 U. S. 270, 276; W. W. Cargill Co. v. Minnesota, 180 U. S. 452, 469. It may favor or discourage the liquor traffic, or trusts.

> The criminal law is a whole body of policy on which States may and do differ. If the State sees fit to encourage steam laundries and discourage hand laundries that is its own affair. And if again it finds a ground of distinction in sex, that is not without precedent. It has been recognized with regard to hours of work. Muller v. Oregon, 208 U. S. 412. It is recognized in the respective rights of husband and wife in land during life, in the inheritance after the death of the spouse. Often it is expressed in the time fixed for coming of age. If Montana deems it advisable to put a higher burden upon women than upon men with regard to an employment that our people commonly regard as more appropriate for the former, the Fourteneth Amendment does not interfere by creating a fictitious equality where there is a real difference."

In the case of Patsone v. Pennsylvania, 232 U. S. 138, in upholding as valid and constitutional a statute of the State of Pennsylvania, making it unlawful for any unnaturalized foreign born resident to kill any wild bird or animal, except in defense of personal property, and to effectuate this purpose making it unlawful for such foreign born person to own or be possessed of a shotgun or rifle, this court, at page 144, said:

> "The discrimination undoubtedly presents a more difficult question. But we start with the general consideration that a State may classify with reference to the evil to be prevented, and that if the class discriminated against is or reasonably might be considered to define those from whom the evil mainly is to be feared, it properly may be picked out. A lack of abstract symmetry does not matter. The question

is a practical one dependent upon experience. The demand for symmetry ignores the specific difference that experience is supposed to have shown to mark the class. It is not enough to invalidate the law that others may do the same thing and go unpunished, if, as a matter of fact, it is found that the danger is characteristic of the class named. Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, 80, 81. The State 'may direct its law against what it deems the evil as it actually exists without covering the whole field of possible abuses.' Central Lumber Co. v. South Dakota, 226 U. S. 157, 160; Rosenthal v. New York, 226 U. S. 260, 270; L'Hote v. New Orleans, 177 U. S. 587. See further Louisville & Nashville R. R. Co. v. Melton, 218 U. S. 36. The question, therefore, narrows itself to whether this court can say that the Legislature of Pennsylvania was not warranted in assuming as its premise for the law that resident unnaturalized aliens were the peculiar source of the evil that it desired to prevent. Barrett v. Indiana, 229 U. S. 26, 29."

In the case of Metropolis Theater Co. v. Chicago, 228 U. S. 61, at pp. 69-70, this court stated the rule as follows:

"In other words, there is natural relation between the price of admission and revenue, some advantage certainly that determines the choice. The distinction obtains in every large city of the country. The reason for it must, therefore, be substantial, and if it be so universal in the practice of the business it would seem not unreasonable if it be adopted as the basis of governmental action. If the action of government have such a basis it cannot be declared to be so palpably arbitrary as to be repugnant to the Fourteenth

Amendment. This is the test of its validity, as we have so many times said. We need not cite the cases. It is enough to say that we have tried, so far as that Amendment is concerned, to declare in words, and the cases illustrate by example, the wide range which legislation has in classifying its objects. To be able to find fault with a law is not to demonstrate its invalidity. It may seem unjust and oppressive, yet be free from judicial interference. The problems of government are practical ones and may justify, if they do not require rough accommodations—illogical, it may be, and unscientific. But even such criticisms should not be hastily expressed. What is best is not always discernible; the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. It is only its palpably arbitrary exercise which can be declared void under the Fourteenth Amendment; and such judgment cannot be pronounced of the ordinance in controversy. Quong Wing v. Kirkendall, 223 U. S. 59."

This court in the case of Citizens' Telephone Co. v. Fuller, *supra,* after referring to a number of its former decisions on this subject, laid down this rule:

"They illustrate the power of the Legislature of the State over the subjects of taxation and the range of discrimination which may be exercised in classifying those subjects when not obviously exercised in a spirit of prejudice and favoritism. Cook v. Marshall County, 196 U. S. 261, 274; Missouri v. Dockery, 191 U. S. 165. The cases decided subsequent to the decision in Bell's Gap Railroad Co. v. Pennsylvania, have applied its principle to many varying instances. Granting the power of classification, we must grant government the right to select the differences upon

> which the classification shall be based, and they need not be great or conspicuous. Keeney v. New York, 222 U. S. 525, 536. The State is not bound by any rigid equality. This is the rule;—its limitation is that it must not be exercised in 'clear and hostile discriminations between particular persons and classes.' See 223 U. S. 59, 62, 63. Thus defined and thus limited, it is a vital principle, giving to the government freedom to meet its exigencies, not binding its action by rigid formulas but apportioning its burdens and permitting it to make those 'discriminations which the best interests of society require.'"

In the case of Atlantic Coast Line v. Goldsboro, 232 U. S. 548, at p. 558, this court said:

> "For it is settled that neither the 'contract' clause nor the 'due process' clause has the effect of overriding the power of the State to establish all regulations that are reasonably necessary to secure the health, safety, good order, comfort, or general welfare of the community; that this power can neither be abdicated nor bargained away, and is inalienable even by express grant; and that all contract and property rights are held subject to its fair exercise." (Citing cases.)

To refer to other cases can, it seems to us, serve no good purpose. The rule, illustrated by the cases, is well settled. The legislative bodies of the municipalities, of the States and at least some of the members of the Federal Congress, as abundantly appears from the records of which this court takes notice, think there should be legislation on this subject. The people of the country are interested, they are directly affected, and they speak

through their law-making bodies in protest at the burdens placed upon them by this business.

The Legislatures have no trouble in classifying the business for legislative purposes. We submit that there is a just basis for the classification, that the act assailed is not in violation of the Federal Constitution, and that the court below was in error in so holding.

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Supreme Court of the United States

OCTOBER TERM, 1914.
No. 318.

JOHN W. RAST, TAX COLLECTOR FOR DUVAL COUNTY, STATE OF FLORIDA, ET AL., APPELLANTS,

vs.

VAN DEMAN AND LEWIS COMPANY, ET. AL., APPELLEES.

Appeal from the District Court of the United States for the Southern District of Florida.

STATEMENT FOR APPELLEES OF AMENDMENT OF FLORIDA STATUTE SINCE APPEAL.

Since the appeal was taken in this case there has been a session of the Florida Legislature, to-wit: the regular session from April 6th, to June 4th, 1915, and at said session an Act was passed which amended Section 35 of Chapter 6421, Act of 1913, entitled An Act Imposing Licenses and Other Taxes, etc., which Section of said License Tax Act contained the provisions complained of in the Bill of Complaint. The Bill introduced in said Legislature of 1915 to amend said Act of 1913 as originally introduced abrogated and repealed all provisions imposing license taxes on merchants for using trading stamps as well as for using coupons, profit sharing certificates, etc., and the bill as so introduced also provided for removing, abrogating and terminating all liabilities, penalties, prosecutions and punishments under and because of any portions of said Section 35 repealed or omitted by such amendment. The Legislature, however, struck out all provisions to remove, abrogate and

terminate liabilities, prosecutions and punishments under or because of any portions of said Section 35 repealed or omitted as aforesaid, and also restored in the bill the license tax of $250.00 on merchants using trading stamps for each place of business where they use such stamps.

Chapter 6923, Acts of 1915, approved June 2nd, 1915.

The Constitution of the State of Florida provides that the repeal or amendment of any criminal statute shall not affect the prosecution or punishment of any crime committed before such repeal or amendment.

Constitution of Florida, Article 3, Section 32.

The consequence, therefore, of the Legislature's refusing to enact a provision to remove, abrogate and terminate liabilities, penalties, punishments and imprisonments under or because of any portions of said Section 35 repealed or omitted by the amending act was that the amending act left the Appellees in this case and all other Florida merchants in similar situation exposed to innumerable prosecutions for every alleged violation of the Act of 1913, that is to say exposed to the dangers of being prosecuted, fined and imprisoned on account of every sale of any article of merchandise that any such merchant had made where the article contained or had attached any coupon, profit sharing certificate or the like or where the merchant had offered or given any coupon, profit sharing certificate, trading stamp or the like, which the merchants had been doing daily for about two years under the protection of the injunction in the United States District Court for the Southern District of Florida from which this appeal is taken. It remains necessary, therefore, that all the grounds upon which said injunction was granted should be considered and passed on by this Court and the injunctional order or decree be sustained in order to protect said merchants in their rights under the Constitution of the United States. Furthermore the Legislature having retained a provision taxing each merchant $250.00 license tax for each place of business where he uses trading stamps, all questions involving the validity of such provision remain before this Court and it is necessary for the protection of the rights of the Ap-

pellees that they be considered and determined by this Court and the injunction be sustained.

We give below, for the information of the Court, the said amendatory Statute of the State of Florida, the said Section of the Constitution of the State of Florida, and the citation of decisions of the Supreme Court of the State of Florida holding that the amendment or repeal of such a Statute does not prevent anyone from being prosecuted for acts done while the Statute was in force or existence.

CHAPTER 6923—(No 117).

AN ACT to amend Sections 30 and 35 of An Act Imposing Licenses and Other Taxes, Providing for the Payment Thereof, and Prescribing Penalties for Doing Business Without a License, or other failure to comply with the Provisions Thereof, Approved June 5th, 1913; and to Remove, Abrogate and Terminate all Liabilities, Penalties, Prosecutions and Punishments Under or Because of any portions of Said Section 35 Repealed or Omitted by Such Amendment.

Be It Enacted by the Legislature of the State of Florida:

Section 1. That Section 30 of Chapter 6421, Acts of 1913, be and the same is hereby amended to read as follows:

"Section 30. Junk, dealers in, shall pay a license tax of fifty ($50.00) dollars, and shall keep a full and complete record of each transaction of their business showing from whom and when each article of their stock was purchased or acquired, and to whom sold and date of such sale, and such record shall at all times be subject to the inspection of all police or peace officers. Any violation hereof shall be punished by imprisonment in the county jail for not more than six months.

Job Printing. Owners or managers of job printing offices, running by power, in cities and town of ten thousand inhabitants or over, shall pay a license tax of ten ($10.00) dollars."

Section 2. That Section 35 of Chapter 6421, Act of 1913 be and the same is hereby amended so as to read as follows:

"Section 35. Merchants, Druggists and Storekeepers, shall pay a license tax as follows:

For the first one thousand ($1,000.00) dollars or fraction of one thousand dollars of stock of merchandise, three ($3.00) dollars in each county and for each place of business, and one and one-half ($1.50) dollars for each additional thousand or fraction thereof; but dealers in merchandise at wholesale only, shall pay a license tax of one and one-half ($1.50) dollars for each one thousand ($1,000.) dollars of their stock of merchandise. Provided, That the words 'stock of merchandise' shall be held to mean the cash value of merchandise or goods on hand and not the amount of capital stock invested in the business; Provided further that any merchant keeping sewing machines in stock for sale in the same manner as other merchandise shall not be taxed as a sewing machine agent or dealer.

Mercantile Agencies. Shall pay a license tax of fifty ($50.00) dollars in each county in which an office is established.

Merchants using trading stamps, shall pay a license tax of two hundred and fifty ($250.00) dollars for each place of business where they use such stamps.

Merchant tailors shall pay a license tax of ten ($10.00) dollars for each place of business."

Section 3. This Act shall go into effect immediately upon its passage and approval by the Governor.

Approved June 2, 1915.

The following is the provision of the Florida Constitution on the subject:

ARTICLE III

LEGISLATIVE DEPARTMENT

Section 32. The repeal or amendment of any criminal statute shall not affect the prosecution or punishment of any crime committed before such repeal or amendment.

The following are the Florida decisions hereinbefore mentioned:

"2. Section 32 of Article III of the Constitution of 1885 provides that 'the repeal or amendment of any criminal statute shall not affect the prosecution or punishment of any crime committed before such repeal or amendment. The effect of this constitutional provision is to give to all criminal legislation a prospective effectiveness; that is to say, the repeal or amendment, by subsequent legislation, of a pre-existing criminal statute does not become effective, either as a repeal or as an amendment of such pre-existing statute in so far as offenses are concerned that have been already committed prior to the taking effect of such repealing or amending law. And a crime committed prior to the taking effect of a statute that amends or repeals the law violated by the commission of such crime stands for prosecution and punishment under the law that it violated at the time of its commission, notwithstanding the subsequent repeal or amendment of such law."

Raines v. State, 42 Fla., 141, 142, Head-Note 2.

Blue v. State, 32 Fla., 53.

Brown v. State, 31 Fla., 207.

Reynolds v. State, 33 Fla., 301.

As is shown by the Florida legislation, the provision of the Florida Constitution and the decisions of the Supreme Court of Florida, as hereinbefore quoted and cited, the status of this appeal is not affected by any subsequent legislation and all the questions involved in the suit and discussed in the briefs remain for the consideration and decision of this Honorable Court, and it is necessary that they should be considered and decided, as we respectfully submit fully appears from the quotations and citations above mentioned.

CHARLES M. COOPER,
Counsel and Solicitor for Appellees.

In the Supreme Court of the United States

OCTOBER TERM, 19[redacted]

No. [redacted]

JOHN W. MARTIN, JR., SECRETARY OF STATE FOR DELAWARE COUNTY, STATE OF ELAINE, ET AL.,

APPELLANTS,

v.

PEAK REFINING AND [illegible] COMPANY, ET AL.,

APPELLEES.

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Supreme Court of the United States

OCTOBER TERM, 1914.
No. 318.

JOHN W. RAST, TAX COLLECTOR FOR DUVAL COUNTY, STATE OF FLORIDA, ET AL., APPELLANTS,

vs.

VAN DEMAN AND LEWIS COMPANY, ET AL., APPELLEES.

Appeal from the District Court of the United States for the Southern District of Florida.

BRIEF FOR APPELLEES.

STATEMENT OF THE CASE.

This cause is brought before this Court by appeal from the orders of the District Court of the United States for the Southern District of Florida granting an interlocutory injunction in said cause and overruling and denying the motion of Defendants below to dismiss said suit. (Record pages 44, 45, 53.) This was a suit in Equity, brought in said District Court by the Appellees against the Appellants. For convenience and brevity we shall hereafter in this brief, in discussing the proceedings in the Court below, refer to the Appellees as the Complainants, and to the Appellants as the Defendants, according to their status in the District Court, excepting where there may be special occasion to speak of them as the Appellants and Appellees in this Court. References to pages of the record in

this brief will be to the top numbering or number of pages of the printed record, unless the contrary is specified.

The facts of the case are fully set out and alleged in the Bill of Complaint, which also specifies the relief prayed, and prays such further and other relief as may be requisite in the premises, and such facts alleged in the bill and the relief prayed are hereinafter mentioned or referred to, as far as may be necessary in this brief, in the discussion of the various features of the case; and propositions of law involved; hence, for the sake of brevity, we shall not undertake to restate the contents of the Bill of Complaint in detail in this preliminary statement of the case, but pray that the bill be referred to for the details thereof. The Bill of Complaint prays in substance that the Defendants Tax Collectors, the Defendants State Attorneys, the Defendants County Solicitors and the Defendants Prosecuting Attorneys be restrained and enjoined from collecting or attempting to collect from said Complainants or any of them, or from any person, firm or corporation, similarly situated, the license taxes, or any of them, or any part thereof, mentioned or provided for in Section 35 of Chapter 6421 of the Laws of Florida, approved June 5, 1913, for or because or on account of offering, giving, selling or delivering with merchandise or using any coupons, slips, certificates or other evidences of indebtedness or liability, or like device or token. Also that said provisions of said Statute may be declared and decreed to be unconstitutional, illegal and void, and that Complainants and each of them may have such further and other relief in the premises as to equity may pertain and to the Court seem meet.

Bill of Complaint, Record 5-25.

MATTERS AND QUESTIONS INVOLVED IN THE SUIT.

The principal questions involved in this suit and which come before this Court on appeal are three. Although there are other material questions properly to be considered by the Court, yet, as above stated, there are three principal questions which may be stated as follows:

1. Have the United States Courts jurisdiction to enjoin State Officers from enforcing the collection of license taxes by

summary levies upon property and by criminal proceedings under a Statute of the State which violates the Constitution of the United States, and where the business interests and property rights of the Complainants will be seriously affected and injured, without adequate remedy at law, as stated in the Bill? We submit that it has been clearly, fully and finally decided by this Court that the United States Courts have such jurisdiction.

2. Do the provisions of the Florida Statute violate the fourteenth amendment to the Constitution of the United States? Under this general question there are three subdivisions to be considered, as there are three general methods of doing the business involved in Florida. They are:

First: Where the Florida merchant issues his own coupon, certificate or cash register receipt and himself makes payment or redemption of the same, sometimes by the delivery of some valuable article of merchandise, sometimes by the payment of cash or allowance of credit on account of purchase, being in the nature of a discount, or for or on account of a certain amount having been purchased of the merchant by the customer. Bill of Complaint, Par. IV, Record page 10. As to the cases or business covered under this head, we submit, that the Court will find under all authorities and decisions, as well as in the reason of the thing and the established principles of constitutional law, that the said Statute violates the Constitution of the United States; and it may be added that it violates the Constitution of the State of Florida. It may be noted here that this provision of the Statute, which, according to all the authorities, is unconstitutional, is the only provision that applies to intrastate commerce, and that the other provisions of the Statute are unconstitutional both because they violate the fourteenth amendment to the Constitution of the United States and also because they are in violation of the commerce clause of the Constitution of the United States, as noted hereafter.

Second: The second class of dealings according to the method of doing business covered by said Statute is that where the manufacturer or shipper outside of the State of Florida in some other State of the Union, inserts such coupons or certificates in packages of his goods which he ships to Florida, and the ultimate purchaser or consumer takes such coupons or cer-

tificates from such packages and returns them to such manufacturer or shipper in such State outside of Florida, who gives a premium for them or redeems them and sends such premium or proceeds of redemption to such ultimate purchaser or consumer in Florida who has forwarded to him such coupons or certificates. Bill of Complaint, paragraph III, Record pages 7-10. This also is the case of a person issuing his own coupons, or certificates, or giving discounts redeemable or payable by himself, and is, in substance, and principle, the same as the case stated in the first subdivision above, where the Florida merchant issues coupons or certificates redeemable or payable by himself, and under all the authorities the provisions of said Florida Statute as to this second class of cases or method of doing business is clearly unconstitutional, being in violation of the Constitution of the United States and of the State of Florida.

Third: The third class of dealings covered by said Statute is where the manufacturer or shipper in a State other than the State of Florida inserts in the packages of his goods which he ships to Florida such coupons or certificates, which are taken from the packages by the ultimate purchaser or consumer in Florida and sent to some company or agency in some State of the United States outside of the State of Florida other than the manufacturer or shipper of the goods, to be redeemed or paid and the premium or proceeds thereof is returned by such company or agency to the person in Florida who has sent such coupons or certificates. Bill of Complaint, paragraph III, Record pages 7-10. This class of cases or method of doing business differs from the two preceding classes in that a premium company or agency other than the manufacturer or shipper himself, is used for the redemption or payment of the coupons or certificates. This transaction may bear some resemblance to the dealing through or with a redemption company or trading stamp company as to which some two or three cases decided in the United States have held that Statutes embodying such license or prohibiting such transactions are constitutional. But these two or three cases are opposed to the whole current of authority upon the subject and to very numerous decisions of the State Courts and the Federal Courts. We submit that the Court will find said two or three decisions above mentioned not only very weak in numbers but weak in

reasoning, and that upon reason, as well as upon the overwhelming weight of authority, said Florida Statute as to this class of cases also is unconstitutional.

3. Does said statute violate the interstate commerce clause of the Constitution of the United States?

THE LICENSE TAX PROVISIONS OF STATUTE COMPLAINED OF.

The license tax provisions of the Statute complained of are contained in Section 35 of Chapter 6421 of the Laws of the State of Florida, entitled, "An Act Imposing Licenses and Other Taxes, Providing for the Payment Thereof and Prescribing Penalties for Doing Business Without a License, or Other Failure to Comply With the Provisions Thereof," which act was approved by the Governor of said State June 5th, 1913. By said Section of said Statute there is a license tax imposed upon merchants, druggists and storekeepers generally. In addition to such regular license taxes every person, firm or corporation, who shall offer with merchandise bargained or sold any coupon, profit-sharing certificates, etc., redeemable in premiums, is required to pay annually a State license tax of $500.00, and a county license tax of $250.00, in each and every county in which said business is conducted or carried on and like amounts of taxes for each place of business, and is required to pay like amounts of additional license taxes where any such coupons, etc., shall be offered with merchandise bargained or sold, redeemable by any other person, firm or corporation for each other person, firm or corporation who may redeem the same; and it is expressly stated that the license taxes prescribed in said Section shall be in addition to other licenses prescribed in the Act. It is further provided in said Section that merchants using trading stamps shall pay a license tax of $250.00 for each place of business where they use such stamps.

Said Section of said Statute reads as follows:

"Section 35. Merchants, Druggists and Storekeepers shall pay a license tax as follows:

"For the first one thousand ($1,000.00) dollars or fraction of one thousand dollars of stock of merchandise, three ($3.00) dollars in each county and for each place of business, and one and one-half ($1.50) dollars for each additional thousand or fraction thereof; but dealers in merchandise at wholesale only, shall pay a license tax of one and one-half ($1.50) dollars for each one thousand ($1,000.00) dollars of their stock of merchandise. Provided, That the words 'stock of merchandise' shall be held to mean the cash value of the merchandise or goods on hand and not the amount of capital stock invested in the business; Provided further, That any merchant keeping sewing machines in stock for sale in the same manner as other merchandise shall not be taxed as a sewing machine agent or dealer.

"Provided further, That each and every person, firm or corporation, who shall offer with merchandise bargained or sold in the course of trade any coupon, profit-sharing certificate, or other evidence of indebtedness or liability, redeemable in premiums, shall pay annually a State license tax of five hundred ($500.00) dollars and a county license tax of two hundred and fifty ($250.00) dollars in each and every county in which said business is conducted or carried on, and if more than one place of such business shall be operated by any person, firm or corporation, a separate State and county license shall be taken out for each such place; and no person, firm or corporation shall offer with merchandise bargained or sold as aforesaid, any coupon, profit-sharing certificates or other evidence of indebtedness or liability, redeemable by any other person, firm or corporation than the one offering the same without paying the above license for each other person, firm or corporation who may redeem the same. The license prescribed in this Section shall be in addition to other licenses prescribed by this Act. Any person violating any of the provisions in this Section, whether acting for himself or as the agent of another, shall on conviction thereof be punished by fine not exceeding one thousand ($1,000.00) dollars or by imprisonment in the county jail not exceeding six months.

"Mercantile Agencies: Shall pay a license tax of one hundred ($100.00) dollars in each county in which an office is established.

"Merchants using trading stamps shall pay a license tax of two hundred and fifty ($250.00) dollars for each place of business where they use such stamps.

"Merchant tailors shall pay a license tax of ten ($10.00) dollars for each place of business."

Bill of Complaint, paragraph XI, Record pages 12, 13.

Acts of the Legislature of the State of Florida, Regular Session, 1913, Volume I, pages 35, 36.

THE IMPOSITION OF A LICENSE TAX ON TRADING STAMP COMPANIES IS NOT INVOLVED IN THIS CASE.

It is to be noted that this Bill of Complaint is brought by certain Florida merchants on behalf of themselves and the many other merchants of Florida in like situation to enjoin the collection of license tax from such merchants for offering any coupon, profit-sharing certificates, etc., as hereinbefore mentioned and specified in the Bill of Complaint. This case does not involve any question as to whether or not the State has the right to impose a license tax on a trading stamp company or person or firm for doing business in the State. There is such a license tax imposed in another Section of the Florida Statute. The trading stamp business, whether conducted by a person, firm or a corporation generally known as a trading stamp company, consists in substance of the trading stamp concern's furnishing such stamps to merchants with lists of premiums, which premiums are held by the trading stamp concern and a trading stamp concern practically selling such stamps to the merchants who deliver them to their customers with goods purchased by their customers, and the trading stamp concern delivering the premiums to the customers upon the presentation of the stamps, such premiums being selected by the cus-

tomers from lists furnished. As above stated, this case does not involve the license tax on that business, but only involves the license tax imposed upon the Florida merchant for issuing and redeeming, himself, coupons, profit-sharing certificates or the like, or his selling and delivering goods of manufacturers and producers from out of the State of Florida, which have such coupons or certificates inserted in or attached to the packages of goods.

The provision of the Florida Statute for a license tax on the business of trading stamp companies is in an entirely different section from the section of the Statute involved in this suit. Said Section concerning the license tax on such trading stamp business is as follows:

> "Sec. 55. Trading Stamp Firms: Persons or firms or corporations known as trading stamp companies, shall pay a State license tax of one thousand ($1,000.00) dollars in each county where they transact any business."
>
> Chapter 6421, Statutes of Florida, Acts of 1913, page 51.

HEARING AND ORDER FOR INTERLOCUTORY INJUNCTION.

Said case was heard at Huntsville, Alabama, on September 18th, 1913, before the Honorable David D. Shelby, Circuit Judge, and the Honorable W. R. Sheppard, District Judge for the Northern District of Florida, and the Honorable Rhydon M. Call, District Judge for the Southern District of Florida, in accordance with Section 266 of the Statutes of the United States approved March 3rd, 1911, entitled "An Act to Codify, Revise and Amend the Laws Relating to the Judiciary," known as "The Judicial Code." The application for an interlocutory injunction was based upon the allegations of the Bill of Complaint and the affidavits thereto attached, duly sworn to by several different affiants representing and acting for the Complainants. The Defendants filed a motion to dismiss the suit. Record pages 33 and 34. Said interlocutory injunction was granted and said motion to dismiss said suit was overruled. Record pages 44, 45.

ARGUMENT.

THERE WAS NO ERROR IN THE ORDERS APPEALED FROM.

The appeal of Appellants, as has been before stated, is from the orders of the Court below granting the interlocutory injunction and denying the motion to dismiss the Bill of Complaint. The grounds upon which Appellants contend that the Court below erred are the same as to the granting of the interlocutory order and as to the overruling of the motion to dismiss. They are stated in the motion to dismiss. Record pages 33 and 34. They amount, in substance, to two grounds: first, that the Court has not jurisdiction to enjoin and restrain the Defendants who are officers of the State of Florida from the performance of the duties imposed upon them by the Statute in question; second, that there is no equity in the bill. We submit that this Court will find upon examination and consideration of the matter that the Court below did have jurisdiction, that the Bill of Complaint did state a case for equitable relief, and that the interlocutory injunction was properly granted.

The opinion in said case delivered by Judge Call is, we submit, a very clear and convincing statement of the facts and the law.

See printed record pages 38-44. 214 Fed. R., 827.

IMPORTANCE OF THIS CASE AND THE PRINCIPLES INVOLVED THEREIN.

This case is one of much importance in the matters which are immediately involved in the decision that may be rendered therein, involving as it does immediately the right of a great number of Florida merchants to do business according to established methods and to handle and sell many articles of merchandise from which they would be precluded by the enforcement of the Statute complained of, and involving also the

right of manufacturers, producers and shippers of merchandise all over the United States to ship their goods into Florida and to sell and dispose of them and do the business in the manner which has been long established and which they deem advantageous; but the case is of vastly more importance in the necessary application of principles of constitutional law for the protection of rights of property and of personal liberty guaranteed to citizens by the Constitution of the United States. There may have been a time in this country when the Courts were disposed to be too narrow in declaring restrictions upon the powers of Legislatures claimed to be exercised for the welfare of communities or of the State, but, if so, there certainly exists no such condition now. The recognition by the Courts of the broad powers of the Legislatures, under the police power and the power of taxation, to regulate, restrain and prohibit, is certainly not now circumscribed by any narrow boundaries or limitations. Changes in conditions in this country, the great growth of population, new conditions of business and of living, a vast immigration of people, comparatively ignorant, without anything of the American spirit, character or capabilities, have all tended to make a wider exercise of such governmental powers necessary, but we submit that as far as may be possible American institutions, the American spirit and the rights of the individual should be preserved. There is no danger now of the powers of Legislatures being too circumscribed, the danger is that the rights of the individual to property and to liberty, including the control and transaction of his own affairs and business in his own way, provided it does not violate or endanger the public peace, morals, health or welfare, will be arbitrarily and unnecessarily and unjustly restrained or taken away. Every tendency or movement for progress or development or the public welfare has to be carefully guarded or else it will be used and abused by those who seek to pervert it to their own selfish and unjust ends. The greatest peril in this country is in the constant efforts of individuals and classes to inject into legislation provisions to deprive some persons of rights or opportunities in order to give undue advantages to others. Where legislation, so brought about or tending to such ends, is enacted, the greatest obligation now existing upon the Courts and the function wherein they can render the greatest service is in protecting the people from such legislation where it is prohibited by the Constitution of the United

States or of the State. While the Courts should be and are very careful not to attempt to substitute their ideas of policy or expediency for those of the Legislature, yet upon the other hand, they can not, without abandoning the highest duty which they owe to the people and to the country, refuse or avoid the exercise of the power and the duty to declare unconstitutional statutes which unduly infringe upon the rights of the individual or which under pretense of taxation or regulation or prohibition are really arbitrary and unjustifiable. This case, as we have said, is one which in itself involves the right to do a vast amount of business as it has been done, and concerning matters which afford no ground for legislative restraint or prohibition, but beyond that it involves the question of whether the Legislature is practically beyond any restraint of the Constitution of the United States or of the State in interfering with, restraining or destroying the business and property of the individual. When, in the great case of Munn vs. Illinois, the Supreme Court of the United States declared the principles of law upon which have been based, or which have sustained, a mass of remedial legislation providing for the regulation of railroad corporations and others transacting business of such a public nature as to bring them within that decision, the opinion of the Court was very broad in its language and there was at first a general impression throughout the country that it had been held therein that there was no power in the Courts to protect rights of property that might be involved in such cases from destruction or confiscation, but that such legislation was wholly within the arbitrary discretion of the Legislatures, and that the only appeal for redress was to the ballot-box. Very soon it became apparent that if such were the law all property rights involved might be and probably would be confiscated or destroyed and there followed a series of decisions by this Court limiting the legislative power and protecting the rights of property with the result that we have had built up a system of law recognizing legislative power within proper limits and protecting individual rights. Under the recent decisions of the Court the powers of the Legislatures have been amply recognized and declared. The pendulum has swung fully as far as it ought to go in that direction and what is necessary now is the recognition and declaration of the other side of the law for the protection of the individual so that American insti-

tutions and American liberty may not be utterly lost and destroyed, and the American citizen may not be abandoned and delivered up deprived of the protection of law and his constitutional rights to the arbitrary, unconsidered and partial action of Legislatures. There is no means by which such arbitrary and unjust legislation and legislation enacted in the interests of some particular individuals or classes can be more readily brought about than under the guise of license taxes. Consider this Florida statute in question. There are fifty-six pages containing almost innumerable provisions imposing license taxes. How easy it was to slip any particular provision into such a statute for the selfish purpose of some individual seeking to gain an advantage over some business competitors without any public demand and without any public reason or necessity, without notice and without consideration for the public welfare, may be readily perceived. Unless the citizen is protected in his constitutional rights by the Courts against such legislation, he is without any protection whatever.

THIS COURT HAS JURISDICTION OF THE SUBJECT MATTER OF THE BILL OF COMPLAINT, OF THE PARTIES, AND TO GRANT THE RELIEF PRAYED.

PARTIES.

The suit is brought by the Complainants on behalf of themselves and others similarly situated, who have a general interest in the subject of the action and in obtaining the relief demanded or prayed herein and to whom the questions involved herein are of general interest, and who constitute a class so numerous as to make it impracticable to bring them all before the Court. Record page 3.

This is specifically authorized in such a case by the new rules of practice for the Courts of Equity of the United States promulgated by the Supreme Court of the United States.

Rules of Practice for Courts of Equity. Rule 38.

Little, et al., vs. W. V. Tanner, as Attorney General of the State of Washington, et al. 208 Fed. R., 605.

The suit is brought against the Tax Collectors of the several counties of the State of Florida and against the prosecuting

officers, to-wit: the State Attorneys, County Solicitors and Prosecuting Attorneys for the several Judicial Circuits and Counties of the State of Florida. In order for Complainants to obtain any complete or adequate relief in the premises it was necessary to make all of said Officers of said State parties defendant. Some of them are inhabitants of the Southern District of Florida and some of them are inhabitants of the Northern District of Florida, as shown in the Bill of Complaint, but both of said districts being in the same State and the suit not being of a local nature, said suit against all of said Defendants is expressly authorized and provided for by Sections 52 and 53 of the Judicial Code; and it is further provided by said sections that all mesne and final process which, according to the decisions and authorities, includes all orders and decrees in the cause, may be served and executed in any or all the divisions of the district in which the suit is brought and in any and all districts contained in the State.

Judicial Code, Sections 52 and 53.

FEDERAL QUESTIONS.

The Bill of Complaint involves several Federal questions, as it sets forth that the act of the Legislature of the State of Florida, complained of, is in a number of particulars in violation of the Constitution of the United States, to-wit: in violation of the commerce clause of the Constitution; in violation of the Fourteenth Amendment to the Constitution; in violation of Section 10 of Article 1 of the Constitution which provides that no State shall pass any law impairing the obligation of contracts; and in violation of the second clause of Article 6 of the Constitution of the United States which declares that the Constitution and laws of the United States which shall be made in pursuance thereof shall be the supreme law of the land, inasmuch as said Florida statute conflicts with certain statutes of the United States mentioned in the Bill of Complaint and hereinafter referred to. Consequently this Court has jurisdiction of the subject matter of the cause without regard to the citizenship of the parties. See paragraphs XIV, XV and XVI of the Bill of Complaint.

Printed Record pages 15-20.

VALUES IN CONTROVERSY.

The Bill of Complaint also shows that the matter in controversy in this suit as to each of said complainants exceeds the sum or value of three thousand dollars, exclusive of interest or costs. See paragraphs XII, XX, XXI and XXII of the Bill of Complaint.

Printed Record pages 13-15, 20-23.

ALLEGATIONS OF BILL SHOWING JURISDICTION AND RIGHT OF COMPLAINANTS TO RELIEF IN EQUITY.

The Bill of Complaint further shows not only that the provisions of Section 35 of Chapter 6421 of the Laws of the State of Florida, approved June 5th, 1913, and in the Bill of Complaint particularly set forth, are in violation of the Constitution of the United States upon the facts and the grounds specified in the bill, but, also, that the penalties, fines and imprisonments provided in said section of said statute for the enforcement thereof, are so onerous, drastic and excessive and numerous as to deter Complainants from going on doing business in the premises as they have heretofore done, and testing the validity of said statute and the provisions thereof in a Court of law; and that the Defendant Tax Collectors are threatening to and will immediately proceed to collect said license taxes from each of Complainants and from all other persons in like situation, and in order to do so will seize and sell their property and will enter upon their stores and warehouses and will interrupt and interfere with their businesses and will seize their stocks of wares, goods and merchandise, and will cause each of them loss of business, trade and customers, and will sell such property at forced sales and at sacrifices, and will greatly injure and damage the property and the business of each of Complainants, and of such other persons, and will not only cause loss and damage to each of them by reason of seizing and taking their property, but will also, on account of the peculiar character and uses of the property, to-wit: their stocks of merchandise wherewith and whereby they exercise, carry on and maintain their businesses and occupations, and

because of the repeated and numerous seizures and sales of such property that will be made by such Defendant Tax Collectors, and such a multiplicity of litigation would be inflicted on and caused to each of said Complainants, and such other persons, and their businesses and occupations would be so interrupted, damaged and destroyed and such tremendous amounts of moneys, costs and expenses would be collected out of them or their property seized and sold therefor, and the damages resulting would be so difficult or impossible of ascertainment and computation that they have no adequate remedy at law in the premises. It is further alleged that said Defendant State Attorneys, County Solicitors and Prosecuting Attorneys are threatening to prosecute Complainants under said section of said Statute of the State of Florida and that such prosecutions will affect the property and property rights of each of said Complainants and prevent them from enjoying, using or disposing of their property or transacting their business, as in the bill set forth, and will greatly lessen the value of their property and will prevent them from disposing of much property now in their possession, as in the bill set forth, and will prevent them from acquiring and disposing of like property in the future, and will prevent them from carrying out their contracts or representations in connection with property already sold or disposed of, as in the bill set forth; and that the threatened actions and proceedings of each of said Prosecuting Officers and each of said Tax Collectors will have all of said consequences and effects; and Complainants and other persons in like situation will be frequently and constantly arrested, restrained and deprived of their liberty and prosecuted in the Courts of said State by or under the authority and action of said Defendant Prosecuting Officers, and the Complainants and other persons in like situation have no adequate action or remedy in the premises at law and can only obtain suitable or adequate relief in a Court of Equity. See Bill of Complaint, paragraphs XII, XIV, XXI and XXII.

Printed Record pages 13-15, 15-19, 21-23.

THE JURISDICTION AND RIGHT TO RELIEF ARE FULLY ESTABLISHED BY DECISIONS OF SUPREME COURT OF THE UNITED STATES.

It is thoroughly settled by the decisions of the Supreme Court of the United States and of the other Federal Courts that in such a case as is stated by the Bill of Complaint in this cause the Courts of the United States have full jurisdiction and will, as Courts of Equity, grant such relief as is prayed in said bill by injunction and by declaring and decreeing such a statute as that complained of herein to be unconstitutional, illegal and void and will grant such other equitable relief as may be requisite or appropriate in the premises; that the Federal Courts will so enjoin State officers and that such a suit against State officers for such relief is not a suit against the State and not prohibited by the provision of the Federal Constitution, providing that the judicial power of the United States shall not be construed to extend to any suit against a State such as is mentioned in the Eleventh Amendment of the Constitution of the United States; and that the Federal Courts will in such a case enjoin any officers from so interfering with the business and property rights of complainants under such an unconstitutional Statute, whether such interference shall be by civil or criminal proceedings.

Ex-Parte Young, 209 U. S., 123; 52 Law Ed., 714.

The principles and propositions above stated have been declared and decided in numerous cases in the Federal Courts and we shall cite as many of them as time and space will permit, but really, we submit that we need not go any further than the citation of the above case of Ex-Parte Young and the statement of the question involved and of the answer thereto in the language in which they are stated by the Supreme Court of the United States, as follows, the question being stated thus:

"The question that arises is whether there is a remedy that the parties interested may resort to, by going into a Federal Court of Equity, in a case involving a violation of the Federal Constitution, and obtaining a judicial investi-

gation of the problem, and, pending its solution, obtain freedom from suits, civil or criminal, by a temporary injunction, and, if the question be finally decided favorably to the contention of the company, a permanent injunction restraining all such actions or proceedings."

Ex-Parte Young, 209 U. S., 149; 52 Law Ed., 724-725.

And the answer being stated by the Supreme Court of the United States thus:

"The various authorities we have referred to furnish ample justification for the assertion that individuals who, as officers of the State, are clothed with some duty in regard to the enforcement of the laws of the State, and who threaten and are about to commence proceedings, either of a civil or criminal nature, to enforce against parties affected an unconstitutional act, violating the Federal Constitution, may be enjoined by a Federal Court of Equity from such action."

Ex-Parte Young, 209 U. S., 155-156; 52 Law Ed., 727.

In the still later case of Western Union Telegraph Co. vs. Andrews, et al., the Supreme Court of the United States again declared and enforced in a case very analogous to the present case the doctrine and principle that a United States Court in Equity has jurisdiction to enjoin prosecuting attorneys of a State from taking action in the courts of the State, under the authority of a State statute alleged to violate the Constitution of the United States to recover penalties fixed by that act for violations of its provisions requiring the payment of certain fees in order for complainant to do business in the State. The Bill of Complaint was filed against the prosecuting attorneys of the 17 Judicial Circuits of the State of Arkansas to enjoin them from instituting actions against the Western Union Telegraph Company to recover the penalties for one thousand dollars ($1,000) for each alleged violation of the act. It was averred in the bill that the defendant prosecuting attorneys

would, unless restrained by order of the Court, institute numerous actions as they had threatened to do for the recovery of the penalties aforesaid. Demurrer to the bill was sustained in the United States Circuit Court for the Eastern District of Arkansas and the case was dismissed upon the ground that it was, in effect, a suit against the State of Arkansas. The Supreme Court of the United States affirmed said case of Ex-Parte Young and repeated a part of its language and declared the law to be settled accordingly. The Supreme Court said:

> "This doctrine is precisely applicable to the case at bar. The statute specifically charges the prosecuting attorneys with the duty of bringing actions to recover the penalties. It is averred in the bill, and admitted by the demurrer, that they threatened and were about to commence proceedings for that purpose. The unconstitutionality of the act is averred, and relief is sought against its enforcement. As this case is ruled, upon the question of jurisdiction, by the case of Ex-Parte Young, it is unnecessary to consider the question further. Upon the authority of that case the decree of the Circuit Court dismissing the bill for want of jurisdiction is reversed, and the cause remanded for further proceedings."
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> Western Union Telegraph Company vs. P. R. Andrews, et al., 216 U. S., 165, 166, 167; 54 L. Ed., 430, 431.

At the same term of the Supreme Court of the United States, namely, October term, 1909, there was another decision, to-wit: in case of Ludwig vs. Western Union Telegraph Company, fully declaring and sustaining the jurisdiction of the United States Courts in Equity to retain such a Bill of Complaint as the bill in this case and to grant such relief as is prayed in this bill, and deciding both that such a suit is not a suit against the State, and also that such a bill states a case of equity jurisdiction and that it is a proper case for relief in equity by injunction, as prayed in said last mentioned case. The suit as stated by the Supreme Court of the United States was as follows:

"The Western Union Telegraph Company, a corporation of New York, doing business, both interstate and intrastate, in Arkansas, as it had done for many years, brought this suit against O. C. Ludwig, Secretary of State of Arkansas, for the purpose of obtaining a decree that the statute of that State of May 13th, 1907, entitled, 'An Act to Permit Foreign Corporations to Do Business in Arkansas, and Fixing Fees to Be Paid by All Corporations,' Acts of Arkansas, 1907, p. 744, was unconstitutional, null, and void, and enjoining the defendant, in his official capacity, from attempting to revoke, or proclaiming through official newspaper publications that he had revoked, the authority of the plaintiff to do business in Arkansas, or that it had no right to continue doing business in that State. The plaintiff, in its bill, asked such other and further relief as the case might require and as might seem just."

A temporary injunction was issued, afterwards an amended bill was filed and the case was heard in the Court below on demurrer to the bill.

"The demurrer was on these grounds: That the Court was without jurisdiction to hear and determine the case, 'the same being, in effect, a suit against the State' by a citizen of another State, to prevent the enforcement of one of its criminal or penal statutes; that the facts stated in the bill are not sufficient to constitute a cause of action nor to warrant the relief asked; and that the bill was wholly without equity."

The demurrer was overruled and the defendant having elected not to plead further the injunction previously granted was made perpetual and from that order the appeal was prosecuted to the Supreme Court of the United States. The Supreme Court held, citing said case of Western Union Telegraph Company vs. Andrews, that said suit against the secretary of State to enjoin him, as aforesaid, was not a suit against the State prohibited by the Constitution. The Supreme Court then goes on and considers the grounds of unconstitutionality

of the Arkansas statute and the case is a very valuable one as bearing upon several of the points involved in our case, and said decision of the Supreme Court entirely disposes of and overrules all the grounds of objection made by the defendants or their counsel, the Attorney General of the State of Florida, to the jurisdiction of the Court or its power to grant the relief prayed, or as to complainants being entitled to such relief. The Supreme Court not only held that it was not a suit against the State, but that such a case is a case of equity jurisdiction and a proper case for the granting of injunction by the United States Court against the defendant State officers.

The Supreme Court says:

"What has been said is sufficient for the determination of the present case, and we do not at this time go further than is indicated in this opinion. Suffice it to say that the defendant threatens to issue, in his official capacity, and publish, in the newspapers, a proclamation to the effect—no matter upon what specific grounds—that the telegraph company is not authorized, but is forbidden, under penalty, by the laws of Arkansas, from continuing to do local business in that State. Such a proclamation, the Court, as well as everyone else, must know, would not only produce confusion in and irreparable damage to the company's business in Arkansas, but would, in effect, declare that the company is not only subject to a prescribed penalty of $1,000 for continuing to do local business in Arkansas, but is forbidden to make any contract whatever in that State that is enforceable in law or equity. In order to prevent the contemplated or threatened injury to the company, the Court below properly made a decree perpetually enjoining the appellant, as secretary of State, his agents and attorneys, from making proclamation that the telegraph company has no authority to continue doing business in Arkansas."

Ludwig, Secretary of State of Arkansas, vs. Western Union Telegraph Company, 216 U. S., 146, 152, 164; 54 L. Ed., 423, 425, 430.

"It is well settled that, where property rights will be

destroyed, unlawful interference by criminal proceedings under a void law or ordinance may be reached and controlled by a decree of a Court of Equity. Davis & F. Mfg. Co. vs. Los Angeles, 189 U. S., 207-218; 47 L. Ed., 778-780; 23 Sup. Ct. Rep., 498, and cases therein cited."

Dobbins vs. Los Angeles, 195 U. S., 223, 243; 49 L. Ed., 169, 177.

The jurisdiction has been recently again declared and maintained by this Court in the following case:

Home Telephone & Telegraph Co. vs. Los Angeles, 227 U. S., 278; 57 L. Ed., 510.

The jurisdiction is now treated by this Court as too well established to require argument.

"The conclusion just stated leaves us only the duty of separately and briefly referring to some of the propositions pressed in argument: (a) the contention that because the object of the suit was to enjoin State officers from violating the constitutional rights of the complainant, it was therefore a suit against the State, and not maintainable, is so plainly in conflict with the settled doctrine to the contrary that we do not further notice it."

Benjamin F. Harrison, Secretary of the State of Oklahoma, Appt., vs. St. Louis & San Francisco Railroad Company, decided Feb. 24, 1914, Vol. 34 Sup. Ct. Rep., pages 333, 336.

The fact that many persons are affected by the matters involved in a suit and that unless the rights are determined and decreed by a Court of Equity numerous suits will probably arise out of the matters and questions involved is of itself a sufficient ground of equity jurisdiction and a sufficient ground of granting relief by injunction.

City of Cleveland vs. Cleveland City Railway Co., 194 U. S., 517; 48 L. Ed., 1102.
Mills vs. City of Chicago, 127 Fed., 732; Head Note 4.

In the case of Raymond vs. Chicago Union Traction Company the Supreme Court of the United States held that assessing for taxes the franchise and other property of certain corporations at a different rate and by a different method from that employed as to other corporations of the same class for the same year, which resulted in great disparity and discrimination, denied the due process of law and equal protection of the laws protected by the Fourteenth Amendment to the Constitution of the United States, and that the State statute was unconstitutional; also that there was equity jurisdiction to enjoin the defendant officers of the State of Illinois from any proceedings to collect such taxes under such unconstitutional provisions of the statute of the State; that there was such equity jurisdiction, both because the statute affected not only one individual but a large class of individuals or corporations, and also that Complainant was not required to pay the taxes under protest and to institute suit to recover them back from the State officers or from the city of Chicago or the county of Cook or the taxing bodies.

"We are also of opinion that the case is one over which equity has jurisdiction. In Cummings vs. Merchants' National Bank, 101 U. S., 153; 25 L. Ed., 903, this Court held that the case was one properly brought in equity. It was to restrain the collection of a tax. While the Court held that the position of the bank as trustee entitled it to maintain an action in equity and also under the statute of Ohio, it was further held (page 157): 'Independently of this statute, however, we are of opinion that when a rule or system of valuation is adopted by those whose duty it is to make the assessment which is designed to operate unequally and to violate a fundamental principle of the Constitution, and when this rule is applied not solely to one individual, but to a large class of individuals or corporations, that equity may properly interfere to restrain the operation of this unconstitutional exercise of power.' We

have in the case at bar similar facts. A system of valuation was adopted and applied to a large class of corporations, differing wholly from that applied to other corporations of the same class, and resulting in a discrimination against the Appellee of the most serious and material nature. It is not a question of mere difference of opinion as to the valuation of property, but it is a question of difference of method in the manner of assessing property of the same kind."

Raymond vs. Chicago Union Traction Company, 207 U. S., 20, 37, 38; 52 L. Ed., 78, 88.

"Equity has jurisdiction of a suit to enjoin the enforcement of an invalid ordinance fixing the price to be charged by a gas company to consumers, where they are numerous and the ordinance imposes a penalty for each violation, on the ground of preventing a multiplicity of suits."

Mills vs. City of Chicago, 127 Fed. Rep., 731, 732.

"Where a bill to enjoin enforcement of an alleged illegal municipal smoke ordinance, providing a fine for each separate violation, alleged that it was filed on behalf of complainant and all others similarly situated, and charged that not only was complainant harassed by a multiplicity of suits, but that more suits were threatened by defendant city for violation of the ordinance; that there were a large number of manufacturing plants in the city of Chicago similarly situated with Complainant, and similarly affected; that the ordinance was void, and that a compliance therewith would work irreparable injury and loss of property—a cause of action for equitable relief was presented; and this though a decree restraining further prosecutions under the ordinance would incidentally interfere with criminal proceedings in the State Courts."

Glucose Refining Co. vs. City of Chicago, 138 Fed. Rep., 209.

"A bill by a telephone company to enjoin the enforce-

ment of a city ordinance fixing a maximum rate of charge for telephone service, which alleges the invalidity of the ordinance, and shows that complainant has a large number of contracts with patrons, and that under the provisions of the ordinance it will be subject to prosecution and fine in the case of each one, states a case within equity jurisdiction to prevent a multiplicity of suits."

Ozark-Bell Telephone Co. vs. City of Springfield, Missouri, 140 Fed. Rep., 666.

"(3) Persons against whom an unlawful exaction in the form of a tax is sought to be made may unite in an application for an injunction to restrain the collection of the tax, and are not compelled to pay the same, and brings separate suits against the tax officer for damages."

Hewin, et al., vs. City of Atlanta, 49 S. E., 765, 121 Ga., 731.

CASES CITED BY COUNSEL FOR APPELLANTS TO SUSTAIN OBJECTION THAT THIS IS A SUIT AGAINST THE STATE.

Counsel for Appellants cites two decisions of this Court, namely, In Re Sawyer, 124 U. S., 200, and Fitts vs. McGhee, 172 U. S., 516, in the attempt to support the contention that United States District Court in Equity has not jurisdiction to grant the injunction prayed or the relief prayed by the Bill of Complaint, because it would enjoin the bringing of criminal prosecutions against Complainants by State officers and would amount to a suit and injunction against the State. Said decisions were rendered prior to the case of Ex-Parte Young, 209 U. S., 155, in which all previous decisions of this Court which were thought by this Court to have sufficient bearing on these questions to require notice, were reviewed and held not to conflict with the decision in that case, which decision fully sustains our Bill of Complaint and the relief prayed therein, as we submit we have heretofore clearly shown to the Court.

If, however, any of the cases cited by the Attorney General do in any way conflict with said case of Ex-Parte Young or

the subsequent decisions of the Supreme Court of the United States heretofore cited in this brief, they are overruled or modified by those decisions. The Attorney General in his argument ignores the ground of equity jurisdiction repeatedly stated by the Supreme Court of the United States with reference to such suits and injunctions, namely that where it is alleged that a State statute is in violation of the Constitution of the United States, and that its enforcement either by civil or criminal proceedings would affect property rights of complainants and their rights under the Constitution in circumstances and upon facts such as are stated in this Bill of Complaint, that complainants have the right to go into a Federal Court and have State officers enjoined from instituting any suits or proceedings, civil or criminal, against defendants by temporary injunction until the question can be finally decided, and by permanent injunction if it should be decided in favor of complainants. The Attorney General states in his argument that there is no power in a Court of Equity to enjoin criminal proceedings unless they are instituted by a party to a suit already pending, and to try the same right that is in issue in that suit. Apart from the fact that he ignores other grounds of equity jurisdiction and for such injunction, the case that he states and admits affords grounds for equity jurisdiction and injunction is precisely our case here which is precisely the same case in that respect as said case of Ex-Parte Young.

We allege in the Bill of Complaint that the statute violates the Constitution of the United States and that the defendants are threatening to enforce and about to enforce it by summary levies on the property, interruption and injury of the business and criminal arrests and prosecutions of complainants. Thereupon the Federal questions are brought into the United States Court and the suit to determine them is pending in this Court and the granting of an interlocutory injunction to prevent levies and prosecution by suit, civil or criminal, by said prosecuting officers while said case is pending in this Court under the showing made by the Bill of Complaint that the defendant may be entitled to the relief prayed upon the final hearing is, we submit, clearly within the jurisdiction of the Court, and that the granting of such interlocutory injunction is practically a matter of course. There was no suit pending in the United States Court when the interlocutory injunction was granted in the

case out of which arose the contempt proceedings in Ex-Parte Young, excepting the suit to enjoin said Young as Attorney General of the State of Minnesota and others from taking any steps to enforce the alleged unconstitutional statute. A preliminary injunction was granted, Attorney General Young violated that preliminary injunction and was held to be in contempt of Court. The case is identical with this case in the substantial ground of jurisdiction. There was no receivership of the railroad or any other case pending in the United States Court to give jurisdiction other than the case brought in which the injunction was granted to test the constitutionality of the State statute.

The case principally relied on by the Attorney General is the case of Fitts vs. McGhee, 172 U. S. 516, 43 L. Ed., 535. This case, however, was fully reviewed in said subsequent case of Ex-Parte Young and it was shown that in said Fitts case the officers sued had no duty whatever whether by any special or general statute or law in connection with the matter complained of and the statute the constitutionality of which was attacked; and the Supreme Court of the United States shows fully and clearly that said Fitts case has no application whatever to our case or to the Young case and shows that where officers of the State are threatening to begin suits or prosecutions to enforce an unconstitutional statute that a United States Court of Equity has full jurisdiction to enjoin them, and that it is not necessary that any duty be imposed upon the officers by the unconstitutional statute itself, but that if they have any duty in the premises under the general laws of the State it is sufficient.

> "In those cases the only wrong or injury or trespass involved was the threatened commencement of suits to enforce the statute as to rates, and the threat of such commencement was in each case regarded as sufficient to authorize the issuing of an injunction to prevent the same. The threat to commence those suits under such circumstances was therefore necessarily held to be equivalent to any other threatened wrong or injury to the property of a plaintiff which had theretofore been held sufficient to authorize the suit against the officer. The being specially

charged with the duty to enforce the statute is sufficiently apparent when such duty exists under the general authority of some law, even though such authority is not to be found in the particular act. It might exist by reason of the general duties of the officer to enforce it as a law of the State."

Ex-Parte Young, 209 U. S. 158, 52 L. Ed. 728.

"The answer to all this is the same as made in every case where an official claims to be acting under the authority of the State. The act to be enforced is alleged to be unconstitutional; and if it be so, the use of the name of the State to enforce an unconstitutional act to the injury of complainants is a proceeding without the authority of, and one which does not affect, the State in its sovereign or governmental capacity. It is simply an illegal act upon the part of a State official in attempting, by the use of the name of the State, to enforce a legislative enactment which is void because unconstitutional. If the act which the State Attorney General seeks to enforce be a violation of the Federal Constitution, the officer, in proceeding under such enactment, comes into conflict with the superior authority of that constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States. See Re Ayers, 123 U. S. 507, 31 L. Ed. 230, 8 Sup. Ct. Rep. 164. It would be an injury to complainant to harass it with a multiplicity of suits or litigation generally in an endeavor to enforce penalties under an unconstitutional enactment, and to prevent it ought to be within the jurisdiction of a Court of Equity."

Ex-Parte Young, 209 U. S. 159, 160, 52 L. ed. 729.

"A bill filed to prevent the commencement of suits to enforce an unconstitutional act, under the circumstances already mentioned, is no new invention, as we have already seen. The difference between an actual and direct interference with tangible property and the enjoining of State

officers from enforcing an unconstitutional act, is not of a radical nature, and does not extend, in truth, the jurisdiction of the Courts over the subject-matter. In the case of the interference with property, the person enjoined is assuming to act in his capacity as an official of the State, and justification for his interference is claimed by reason of his position as a State official. Such official cannot so justify when acting under an unconstitutional enactment of the legislature. So, where the State official, instead of directly interfering with tangible property, is about to commence suits which have for their object the enforcement of an act which violates the Federal Constitution, to the great and irreparable injury of the Complainants, he is seeking the same justification from the authority of the State as in other cases. The sovereignty of the State is, in reality, no more involved in one case than in the other. The State cannot, in either case, impart to the official immunity from responsibility to the supreme authority of the United States. See Re Ayers, 123 U. S. 507, 31 L. ed. 230, 8 Sup. Ct. Rep. 164.

"This supreme authority, which arises from the specific provisions of the constitution itself, is nowhere more fully illustrated than in the series of decisions under the Federal habeas corpus statute (753, U. S. Rev. Stat. U. S. Comp. Stat. 1901, p. 592), in some of which cases persons in the custody of State officers for alleged crimes against the State have been taken from that custody and discharged by a Federal Court or Judge, because the imprisonment was adjudged to be in violation of the Federal Constitution. The right to so discharge has not been doubted by this Court, and it has never been supposed there was any suit against the State by reason of serving the writ upon one of the officers of the State in whose custody the person was found. In some of the cases the writ has been refused as matter of discretion; but in others it has been granted, while the power has been fully recognized in all. * * * It is somewhat difficult to appreciate the distinction which, while admitting that the taking of such a person from the custody of the State by virtue of service of the writ on the State officer in whose custody he is found is not a suit against the State, and yet service of a writ on the Attorney General,

to prevent his enforcing an unconstitutional enactment of a State legislature, is a suit against the State."

Ex-Parte Young, 209 U. S. 167, 168, 52 L. ed. 732.

CONTENTIONS OF COUNSEL FOR APPELLANTS THAT COMPLAINANTS SHOULD BE REQUIRED TO SEEK A REMEDY IN STATE COURTS ARE WITHOUT FOUNDATION AND CANNOT BE SUSTAINED.

Counsel for Appellants suggests that Complainants should not be granted relief in this Court because if one of them or any person in like situation should be arrested such person could sue out a writ of habeas corpus. This contention also was fully disposed of by the Supreme Court of the United States in said case of Ex-Parte Young. A person whose rights under the Constitution of the United States are being invaded is not obliged to submit to the humiliation, trouble and punishment of being arrested and held in custody by the sheriff or other like officer until he can get release by habeas corpus, or to run the risk of being convicted or fined or imprisoned; nor where a number of persons are interested in a constitutional question is one of them required to act as a victim of arrest and imprisonment to test the constitutionality of a State law; nor would the suing out of one writ of habeas corpus prevent numerous other arrests of one person or the arrests of any other person in like situation or afford any adequate relief or remedy in the premises.

Ex-Parte Young, 209 U. S. 163, 164, 52 L. ed. 730, 731.

Even if it be a fact that a party may have a remedy in a State Court for the threatened violation by State officers of his right protected by the Constitution of the United States, that does not affect his right to sue in a United States Court and get an injunction therein.

Bacon vs. Rutland R. Co., 232 U. S. 134, 138; 58 L. ed. 538, 539.

There hardly seems to have been any contention in the argument of the Attorney General that the United States Court has not jurisdiction, so far as jurisdiction of the parties is concerned, to enjoin the tax collectors, who are expressly vested with power and upon whom is expressly imposed the duty by said statute complained of of collecting said license taxes and making summary seizures of and levies upon the property of Complainants to collect the same; and which levies and seizures the Bill of Complaint alleges will be made of and upon the stock of merchandise of Complainants, interrupting and interfering with their business and causing them loss of business, trade and customers, and the sale of their property at forced sales and sacrifices, and will greatly injure and damage the property and business of each of said Complainants and of such other persons, and will not only cause loss and damage to each of them by reason of seizing and taking their property but will also, on account of the peculiar character and uses of their property, to-wit: their stocks of merchandise, wherewith and whereby they exercise, carry on and maintain their businesses and occupations, and the injury to their businesses and occupations and credit and loss of customers, and because of the repeated and numerous seizures and sales of such property of Complainants and each of them that will be made by such tax collectors to collect such license taxes from them for the State and county for each place of business and in each and every county in which said business is conducted and carried on, and also for such license taxes for each and every other person, firm or corporation by whom any such coupons, certificates or any other evidence of indebtedness or liability offered or sold in connection with any merchandise, as hereinbefore stated, may be redeemable, and such a multiplicity of litigation would be inflicted on and caused to each of said Complainants and such other persons by such proceedings, and the business and occupations, aforesaid, of each of said complainants and such other persons would be so interrupted, damaged and destroyed and such tremendous amounts of money, costs and expenses would be inflicted upon them or collected out of them or their property seized and sold therefor by said defendant tax collectors, as aforesaid, and the damages resulting would be so difficult or impossible of ascertainment

and computation that each of said complainants and such other persons would have no adequate remedy at law, etc.

It may also be noticed in this connection that under the statutes of Florida Complainants or any other persons whose property may be so seized or levied on by a tax collector would have no right to replevy such property and give bond therefor. The statutes of Florida expressly provide that before any writ of replevin shall be issued the plaintiff shall make affidavit stating among other things concerning the property that "the same has not been taken for any tax, assessment or fine levied by virtue of any law of this State."

General Statutes of Florida, Sections 2175, 2176.

It is specifically shown and alleged in the Bill of Complaint that by the statutes of the State of Florida, and more particularly under and by Section 59 of said statute complained of, approved June 5, 1913, the tax collector of each County is authorized and empowered to enforce the payment of all license taxes by the seizure and sale of property, and that the tax collectors are threatening to and will immediately proceed so to do.

See paragraph XXI of the Bill of Complaint. Printed Record 21-22.

It is further alleged and shown in the Bill of Complaint that said defendant States Attorneys, County Solicitors and Prosecuting Attorneys for the several circuits and Counties mentioned are respectively authorized and empowered by the laws of said State of Florida to prosecute any person for any violation of any of said provisions of said Section 35 of said statute of Florida complained of, and are threatening to prosecute divers of the Complainants therefor. That such seizures, sales, arrests and prosecutions will be made, done and instituted and proceeded with if said tax collectors and said prosecuting officers are not enjoined.

See paragraph XXII of said Bill of Complaint. Printed Record pages 22-23.

That such prosecuting officers have such powers and duties of prosecuting such cases.

See General Statutes of Florida, Sections 1779, 3877, 3881, 3893.

Said Sections of said Statutes are as follows:

(The State Attorney—His Powers, Duties and Responsibilities.)

"1779. (1344.) **Before the Court Itself.** It shall be his duty to appear in the Circuit Court within his judicial circuit, and prosecute or defend on behalf of the State all suits, applications or motions, civil or criminal, in which the State is a party."

"3877. (2825.) **Powers and Duties.** The prosecuting attorney of the Criminal Court of Record shall be called the county solicitor, and his powers, duties and obligations shall be the same as those exercised by and imposed upon the State Attorney, except when otherwise provided."

"3881. (2830.) **Method of Prosecution.** All offenses of which said Court has jurisdiction shall be prosecuted upon information filed by the county solicitor under oath, and the same rules of practice and pleading that now obtain as to indictments shall obtain as to informations. All informations shall begin in effect as follows: '(Name of county solicitor) county solicitor for the county of ....., prosecuting for the State of Florida, in the said county, under oath information makes that.....,' and such information shall have appended thereto the oath of the county solicitor to the effect following: 'Personally appeared before me, ... county solicitor, who being first duly sworn says that the allegations, as set forth in the foregoing information are based upon facts that have been sworn to as true, and which if true would constitute the offense therein charged,' which affidavit shall be made by the county solicitor before some person qualified to administer an oath."

(Its Prosecuting Attorney.)

"3893. (2836.) **Duties.** He shall prosecute all criminal cases before the County Court, and shall sign all informa-

tions filed in said Court by him, and do and perform all the duties required of a prosecuting officer."

Furthermore by said Statute of Florida June 5, 1913, involved in this suit by Section 59 thereof, it is made the duty of the Tax Collectors and County Judges to report to the State's Attorneys any violation of said act, and by Section 63 thereof it is made the duty of the County Judges to report to the proper Prosecuting Officers of the counties the names of all persons that have procured license, etc., so that it is manifest by the terms of this particular statute that the Prosecuting Officers have the duty imposed upon them of enforcing the payment of these license taxes by prosecutions, as well as the power and duty given and imposed upon them under the General Statutes of the State to prosecute all violations of the State Statutes which are punishable by fine or imprisonment.

Statutes of Florida, 1913, Chapter 6421, Sections 59, 63, p. 54, 55.

Said Sections of said Statute are as follows:

"Sec. 59. Any person or persons, firm or corporations or association that shall carry on or conduct any business or profession for which a license is required, by either this or any other Act, without first obtaining such license, shall, except in cases as are otherwise provided by law, be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than double the amount required for such license. The payment of all license taxes shall be enforced by the seizure and sale of the property by the Tax Collector, or in case of State license taxes payable either to the State Treasurer or Comptroller, by the State Treasurer or Comptroller, as the case may be, and it is hereby made the duty of the Tax Collector and County Judge to report to the Comptroller and State's Attorneys any violation of this Act."

"Sec. 63. The County Judge shall report to the grand jury each term of Court, or the Clerk of the Circuit Court when no grand jury is ordered, or to the proper prosecuting

officer in their respective counties, which shall be filed in said Clerk's office, the names of all persons that have procured license under the provisions of this Act. The Comptroller of the State of Florida shall furnish such blanks as are required in book form to the County Judge of each county, who shall receive his receipt therefor, stating the number of blank license in each book received, and the County Judge shall return such books for examination at any time when requested to do so by the Comptroller."

STATEMENTS OF BRIEF FOR APPELLANTS AS TO PROSECUTIONS ARE INCORRECT.

The following statement is made in the brief for Appellants, on page 20:

> "In the instant case there is no suggestion, and there could be none, that those violating the statute would be 'frequently indicted.' All that could be done would be to indict each of them one time. What probably would be done would be to indict one of them one time. In this way the law would be tested and the question settled in the State Courts in the simplest manner and within a very short time."

It would appear in this instance, as in several others in the brief for Appellants, that counsel for Appellants had not carefully read the Bill of Complaint. So far is the statement from being correct that there is no suggestion that those violating the statute would be frequently prosecuted, that on the contrary it is expressly alleged in the Bill of Complaint:

> "* * * and each of said Complainants and persons in like situation will be frequently and constantly arrested, restrained and deprived of their liberty and prosecuted in the Courts of said State by or under the authority and action of said Defendant Prosecuting Officers hereinbefore named."
>
> Bill of Complaint, paragraph 22, Printed Record, pages 22-23.

It is also manifest from the facts alleged in the bill that it would necessarily be the case that there would be frequent prosecutions, arrests, etc., of Complainants and the very numerous other merchants of Florida in like situation. Under the statute each merchant is required to pay these license taxes for every place of business in every county in the State, and also is required to pay such a license tax for every other person whose goods he at any time sells in which, or attached to which, are such coupons or the like. One of the Complainants, Van Deman & Lewis Company, has a place of business in Jacksonville, Duval county, Florida, and another in Miami, in Dade county, Florida; another Complainant, J. S. Pinkussohn Cigar Company, has a place of business in Jacksonville, Duval county, Florida, and also a place of business in Pensacola, Escambia county, Florida, and their officers and employees would be arrested and prosecuted in each of said counties. Also each of the Florida merchants would be arrested and prosecuted or is liable to be arrested and prosecuted every time he makes another sale or delivery of merchandise with a coupon or profit-sharing certificate. Also, no matter how many license taxes he may have paid, every time he gets another kind or brand of goods from another manufacturer or shipper with such coupon or the like inserted therein or attached thereto, he would have to pay another license tax or have his stock of goods seized or be arrested and prosecuted or both, as said officers of the said counties might choose to do. There is no officer in the State of Florida who can give orders to and control said Prosecuting Officers in the performance of their duties as to whom they shall prosecute, or how often they shall prosecute any person. Nor, it may be added, is there any officer in the State of Florida who can control the Tax Collector of each county and order him not to make levies to enforce the payment of license taxes where the statute provides therefor.

Hence, the statements of the brief for Appellants are not only manifestly incorrect as to what the Bill of Complaint states upon this subject, but they are also mistaken as to what could be done and probably would be done as to frequent prosecutions of Complainants and the many other merchants in like situation on whose behalf the Bill of Complaint is brought.

As we have seen, these license taxes would amount to at least fifteen thousand dollars a year for each of these Complain-

ants, for each place of business, and each of the thousands of merchants in the State in like situation, and an additional license tax for each additional article of insert goods of any manufacturer or shipper that they might handle, and each of said Complainants and each such merchants would be liable to be arrested, imprisoned, prosecuted and fined to the amount of one thousand dollars, or imprisoned in the county jail not exceeding six months, for each violation of any provision of said statute concerning said licenses, that is to say, he would be so liable to additional and renewed prosecution, fine and imprisonment every time that he sold or offered an article with such coupons, profit-sharing certificates, etc. We submit that it is manifest that not only have Complainants no adequate remedy at law, but that said statute is unconstitutional upon the ground of imposing such enormous penalties that would prevent parties from testing the same at law. That Complainants have no adequate remedy at law, we submit, is manifest, and that, as is said by this Court in the case of Wadley Southern R. Co. vs. State of Georgia:

> "Of course the right to make a defense, at the risk of having to pay such an enormous penalty, is merely illusory."
> Wadley Southern R. Co. vs. State of Georgia, decided January 11, 1915. Supreme Court Rep., Vol. 35, pages 214, 219.

INJUNCTION AGAINST TAX COLLECTORS WAS PROPER AND NOT ERRONEOUS.

The Bill of Complaint further alleges that the use of such coupons, profit-sharing certificates, etc., induce purchasers to trade more largely with, and make more of their purchases from Complainants, and increases the business of Complainants and their profits from their business, and enables Complainants to carry and sell stocks of goods covering the various articles of merchandise with which such coupons, slips, certificates, etc., are delivered and are of great importance and value to said several Complainants in their said several businesses, and if they are prevented from so using or delivering the same their several businesses will be greatly reduced in the lines of mer-

chandise carried and sold therein and in the amount of business done, and in the receipts and profits, and by the loss of customers, etc., to the amount of many thousands of dollars as to each of them. Also, that each of them has on hand and in their stocks of merchandise large amounts and quantities of such articles which are sold and delivered with such coupons, etc., and if they shall be prevented from selling and delivering such articles with such coupons, etc., each of said Complainants will be subjected to great loss and damage and much hindered, embarrassed and injured in their businesses and the value of their said property on hand will be destroyed or greatly lessened.

Bill of Complaint, paragraph 5, Printed Record, pages 10-11.

It is further alleged in the Bill of Complaint that the said amounts of license taxes are so great that they would take away and destroy all profit in so doing any such business or making any sales, and that they impose financial obligations and burdens so great and require the payment of such sums of money by and from Complainants and all other persons in like situation that they will prohibit and prevent Complainants and all such persons from doing such business and that they are in fact prohibitory.

Bill of Complaint, paragraph 14. Subdivisions F, G and H, Printed Record, pages 17, 18.

It is also alleged in the bill that the penalties, fines and imprisonments provided in said section of said statute are so onerous, drastic, excessive and numerous as to deter Complainants from going on doing business and testing the validity of such statute and the provisions thereof in a Court of law. Also that the fines and penalties imposed by said provisions of said statute are so excessive and exorbitant as to be confiscatory of the property of said Complainants and each of them, were they to continue to carry on their business for the purpose of testing the validity of the same in a Court of law, and should said law be held to be valid.

Bill of Complaint, paragraph 14. Subdivisions L and M, Printed Record, pages 18-19.

The Bill of Complaint further alleges that all of said facts are true as to many other merchants doing business in the State of Florida and being in the same position and condition and having like rights and interests and being subject to like losses, injuries and damages as Complainants, to-wit: as Complainants are informed and believe and so allege, about five thousand merchants of the State of Florida.

Bill of Complaint, paragraph 9, Printed Record, page 12.

Complainants also allege that they and each of them have paid all license taxes due or payable by them respectively to the State of Florida, or any county thereof, for doing and carrying on or entitling them to do or carry on the several businesses of each of them other than the said license taxes concerning any coupons, profit-sharing certificates, etc., in said bill mentioned and complained of.

Bill of Complaint, paragraph 19, Printed Record, page 20.

It is also alleged in the Bill of Complaint that the Defendant Tax Collectors are threatening to and will immediately proceed to collect said license taxes from each of Complainants and from all other persons in like situation, and in order to do so will seize and sell their property and will enter upon their stores and warehouses and will interrupt and interfere with their businesses and will seize their stocks of wares, goods and merchandise, and will cause each of them loss of business, trade and customers, and will sell such property at forced sales and at sacrifices, and will greatly injure and damage the property and the business of each of Complainants, and of such other persons, and will not only cause loss and damage to each of them by reason of seizing and taking their property, but will also, on account of the peculiar character and uses of the property, to-wit: their stocks of merchandise wherewith and whereby they exercise, carry and maintain their businesses and occupations, and because of the repeated and numerous seizures and sales of such property that will be made by such Defendant Tax Collectors, and such a multiplicity of litigation would be inflicted on and caused to each of said Complainants, and such other persons, and their businesses and occupations would be

so interrupted, damaged and destroyed and such tremendous amounts of moneys, costs and expenses would be collected out of them or their property seized and sold therefor, and the damages resulting would be so difficult or impossible of ascertainment and computation that they have no adequate remedy at law in the premises. It is further alleged that said Defendant State Attorneys, County Solicitors and Prosecuting Attorneys are threatening to prosecute Complainants under said section of said Statute of the State of Florida and that such prosecutions will affect the property and property rights of each of said Complainants and prevent them from enjoying, using or disposing of their property or transacting their business, as in the bill set forth, and will greatly lessen the value of their property and will prevent them from disposing of much property now in their possession, as in the bill set forth, and will prevent them from acquiring and disposing of like property in the future, and will prevent them from carrying out their contracts or representations in connection with property already sold or disposed of, as in the bill set forth; and that the threatened actions and proceedings of each of said Prosecuting Officers and each of said Tax Collectors will have all of said consequences and effects; and Complainants and other persons in like situation will be frequently and constantly arrested, restrained and deprived of their liberty and prosecuted in the Courts of said State by or under the authority and action of said Defendant Prosecuting Officers, and that Complainants and other persons in like situation have no adequate action or remedy in the premises at law and can only obtain suitable or adequate relief in a Court of Equity. See Bill of Complaint, paragraphs XII, XIV, XXI and XXII.

Printed Record, pages 13-19, 21-23.

We submit that it is manifest that cases, holding that in the matter of an ordinary levy or threat to levy on personal property to enforce the payment of a tax where there are no special circumstances involved and where the party has an adequate remedy by an action of damages at law, or where there is an ordinary and reasonable sum assessed as a tax and a party can pay it without any special injury or inconvenience and suit or recovery at law that a Court of Equity will not grant an injunc-

tion, have nothing whatever to do with this case, but that this case comes within the other decisions and the rule that where there are special facts and circumstances that call for equitable relief that the injunction will be granted. There is present in our case every ground upon which such an injunction should be granted, as stated and laid down in the decisions of this Court. The doctrine that a Court of Equity will enjoin the collection of a tax where the bill contains such allegations has been repeatedly held and declared by this Court. It is stated in a very recent case as follows:

> "The right to invoke the equity jurisdiction is clear; for the act specifically makes the tax a lien upon the real estate of appellants, from the cloud of which they sought to free it by the bringing of these actions. (Sec. 117 of Act; Sec. 5506, Gen. Code); and the bills alleged threatened irreparable injury through the enforcement of the penalties and coercive features of the act."
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> Ohio R. & W. R. Co. vs. Dittey, 232 U. S., 576, 587; 58 L. Ed., 738, 743.
>
> Fargo vs. Hart, 193 U. S., 490, 503; 48 L. Ed., 761, 767.

The doctrine that the collection of taxes will be enjoined in such cases is also clearly stated in the opinion of this Court delivered by that great Chancellor, Mr. Justice Bradley, wherein the following language is used:

> "It can not be denied that bills in equity to restrain the collection of taxes illegally imposed have frequently been sustained. But it is well settled that there ought to be some equitable ground for relief besides the mere illegality of the tax; for it must be presumed that the law furnishes a remedy for illegal taxation. It often happens, however, that the case is such that the person illegally taxed would suffer irremediable damage, or be subject to vexatious litigation, if he were compelled to resort to his legal remedy alone."
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> 113 U. S., 516, 526-527; 28 L. Ed., 1098, 1102.
>
> Raymond vs. Chicago Union Traction Co., 207 U. S., 20, 37, 38; 52 L. Ed., 78, 88.
>
> Cummings vs. Merchants Nat. Bank, 101 U. S., 153; 25 L. Ed., 903.

CASES CITED IN BRIEF FOR APPELLANTS DO NOT SUSTAIN THE CONTENTION THEREOF THAT THERE IS NO GROUND IN THE BILL OF COMPLAINT FOR RELIEF IN EQUITY AGAINST TAX COLLECTORS.

Appellants contend in their brief that there is no ground shown by the Bill of Complaint for relief in equity against the Tax Collectors and cite certain cases supposed to sustain that contention. In the argument and the attempted application of the citations in the brief for Appellants, the numerous grounds of equity jurisdiction alleged and specifically stated in the Bill of Complaint are ignored. Appellants might cite innumerable cases to the effect that the mere facts that a tax is illegal and that there is a threat to levy on personal property to collect the same are not sufficient alone and without any other circumstances or grounds of equity jurisdiction to entitle a Complainant to an injunction, but what has that to do with this case? The Bill of Complaint in this case alleges and specifically states the facts to support several grounds of equity jurisdiction which, under all the decisions of this Court and under the authorities generally, are sufficient to entitle the Complainants to the relief prayed in the bill. Among others are the grounds of multiplicity of suits, and multiplicity of arrests and prosecutions, and enormous sums of license taxes, fines and penalties, costs and expenses, and frequent imprisonments to which Complainants will be subjected; the peculiar character of the property that would be levied on and seized, from time to time, namely their stocks of merchandise; the injury to and breaking up of their businesses; the prevention of their doing business and selling many kinds of goods and merchandise; the depriving them of customers and trade, and loss of credit, the great difficulty or impossibility of ascertaining and computing the amounts of such damages; and the fact that these facts and the matters, concerning which relief is sought, apply to a large number, to-wit: about 5,000 merchants located and doing business in Florida; all and each are sufficient to sustain equity jurisdiction and to entitle Complainants to the relief prayed in the bill.

See Bill of Complaint, paragraph 21 and paragraph 22, Printed Record, pages 21, 22, 23; paragraph 9, Printed Record, page 12.

All the cases decided in this Court, cited by Appellants, upon this point, expressly sustain the equity jurisdiction wherever there are such circumstances as are alleged in the Bill of Complaint in this case, and we have already, in this brief, cited a number of decisions of this Court sustaining the jurisdiction and the exercise thereof. As stated, the decisions of this Court cited by Appellants in every instance declare that such relief will be granted in equity where there is any equitable ground stated for it, such as any one of the grounds stated in this Bill of Complaint. For instance, in the case of Pacific Express Company vs. Siebert, cited by Appellants, it is expressly declared that either the fact that a Complainant may be subjected to a multiplicity of suits or his business may be ruined, or he may be otherwise irreparably injured, will entitle the Complainant to an injunction. This Court therein uses the following language:

> "But when the illegality of the tax or the invalidity or unconstitutionality of the legislative act under which it is imposed is established, it becomes necessary to go further, and make out a case that can be brought under some recognized head of equity jurisdiction; such as, that the collection of the tax sought to be restrained may entail a multiplicity of suits, or cause some other irreparable injury, as, for instance, the ruin of complainant's business; or, where the property is real estate, throw a cloud upon the title of the complainant."
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> Pacific Express Co. vs. Seibert, 142 U. S., 339; 35 Law Edition, 1035-1038.

Appellants cite several Florida cases which they claim sustain their contentions that a Court of Equity has not jurisdiction to enjoin such threatened levy and seizures to collect such taxes. As this Court has frequently held the contrary, of course the decisions of the Supreme Court of Florida could

not control or affect the equity jurisdiction of the United States Courts in the premises, but said decisions of the Supreme Court of Florida were in cases where there was no such showing of grounds of equitable jurisdiction as there are in this case. Furthermore, the Supreme Court of Florida in later decisions has declared the law as we have shown in Florida cases heretofore cited fully declaring the equitable jurisdiction and the right of Complainants to injunction where there are equitable grounds for relief such as are stated in the Bill of Complaint herein.

Croom, et al., vs. Pennington and Evans, 59 Fla., 473, 475.
Louisville and Nashville R. R. Co. vs. R. R. Commissioners of Florida, 63 Fla., 491, 502-3. 58 So., 547.

THE OPINION FILED IN THE DISTRICT COURT IN THIS CASE CLEARLY SHOWS AND SUSTAINS GROUNDS OF JURISDICTION AND RELIEF.

The opinion filed in this case in the District Court, being delivered by Judge Call, District Judge, states and shows so clearly sufficient grounds of jurisdiction in the Court of the case and grounds which entitle Complainants to the relief in equity prayed, that we submit that said opinion is of itself a sufficient demonstration of the correctness of the decision and orders of the Court below.

Printed Record, pages 38-44. 214 Fed. Rep., 827.

THE SUPREME COURT OF FLORIDA SUSTAINS THE JURISDICTION IN THIS CASE.

Counsel for Complainants is not sustained by the Supreme Court of our own State of Florida in his contentions as to want of jurisdiction in the United States Court in Equity, either as to its being a suit against the State or as to its not being a proper suit for equitable relief. While the decisions of the Supreme Court of Florida could not bind the Federal Courts in the exercise of equity jurisdiction or in the protection of the rights of citizens of the United States under the Constitution of the United States, yet it so happens that the Supreme Court of Florida does not sustain the contentions of the Attorney

General, but on the contrary sustains the jurisdiction of the United States District Court in Equity to entertain the suit and to grant the relief prayed.

Thus in a suit that was brought by Pennington and Evans against A. C. Croom, as Comptroller of the State of Florida, said Comptroller being the head of the financial department of the government of Florida, and said suit being, by a bill in equity to cancel tax sale certificates on lands of Complainants, the lands having been bidden in at the tax sale by the State and the certificates having been issued to and standing in the name of the State, the Supreme Court of Florida held that it was not a suit against the State and that a Court of Equity could grant the relief prayed. Said Supreme Court in said case used the following language:

> "Such a proceeding is not a suit against the State, but is to correct an illegal act of an officer. A suit to obviate the effect of an illegal act of an officer as such is not a suit against the State, for the State authorizes only legal acts by its officers. The State acquires no right under an illegal and void tax certificate issued to it by its officers, and the illegal act of the officer may be reached by the courts in proper proceedings."
>
> Croom, et al., vs. Pennington & Evans, 59 Fla., 473, 475.

The Supreme Court of Florida has further specifically held and declared that illegal action of State Officers may be enjoined when the ordinary remedies afforded by the Courts of law are inadequate; that a suit against State Officers for such relief, where they are acting under invalid authority, or exceeding or abusing their lawful authority and invading private rights that are secured by the constitution, is not a suit against the State; and said Supreme Court of Florida specifically cites and approves said case of Ex-Parte Young and the doctrines and rules laid down therein by this Court. The Supreme Court of Florida uses the following language:

> "When officers of the State act under invalid authority or exceed or abuse their lawful authority and thereby invade

private rights that are secured by the constitution, an action to redress injuries caused by the unauthorized act is not a suit against the State, since the acts of officials that are not legally authorized or that exceed or abuse authority or discretion conferred upon them are not acts of the State. See Croom vs. Pennington & Evans, 59 Fla., 473; 52 South. Rep., 957. Where action taken by State Officials is unauthorized and substantially impairs private rights in violation of the constitution, such action will not be enforced. Pensacola & A. R. Co. vs. State, 25 Fla., 310; 5 South. Rep., 833. State ex rel. Railroad Commissioners vs. Louisville & N. R. Co., 57 Fla., 526; 49 South. Rep., 39. State ex rel. Railroad Commissioners vs. Florida East Coast R. Co., 58 Fla., 524; 50 South. Rep., 425. Illegal action taken by State Officials may be enjoined when the ordinary remedies afforded by Courts of Law are inadequate. Ex-Parte Young, 209 U. S., 123. — Sup. Ct. Rep., —. Trustees I. I. Fund vs. Bailey, 10 Fla., 112. Broward vs. Mabry, 58 Fla., 398; 50 South. Rep., 826. Hopkins vs. Clemson Ag. Col., 221 U. S., 636."

Louisville & Nashville R. R. Co. vs. R. R. Commissioners of the State of Florida, 63 Fla., 491, 502-3. 58 Southern, 547.

WHERE OBJECTION IS MADE TO A STATE STATUTE THAT IT IS UNCONSTITUTIONAL BECAUSE OF VIOLATING THE CONSTITUTION OF THE UNITED STATES AND THAT IT ALSO VIOLATED THE CONSTITUTION OF THE STATE, A FEDERAL QUESTION IS PRESENTED, THE UNITED STATES COURT HAS JURISDICTION AND MAY DECIDE ALL QUESTIONS INVOLVED.

"The unconstitutionality of a statute may depend upon its conflict with the Constitution of the State or with that of the United States. If conflict with the State Constitution is the sole ground of attack, the Supreme Court of the State is the final authority (Merchants' & M. Nat. Bank vs. Pennsylvania, 167 U. S. 461, 42 L. Ed. 236, 17 Sup. Ct. Rep.

829, and cases cited in the opinion); while, in the other case, the ultimate decision rests with this Court. The validity of this act has not been directly presented to or determined by the State Court, but the first attack by the parties interested is made in the Federal Court and by this suit, and conflict with both constitutions is alleged. Undoubtedly a Federal Court has the jurisdiction, and, when the question is properly presented, it may often become its duty to pass upon an alleged conflict between a statute and the State Constitution, even before the question has been considered by the State tribunals. All objections to the validity of the act, whether springing out of the State or of the Federal Constitution, may be presented in a single suit, and call for consideration and determination."

Michigan Central Railroad Company vs. Powers, Auditor General of the State of Michigan, 201 U. S., 245, 290, 291; 50 L. Ed., 744, 760.

San Francisco Gas & Electric Co. vs. City and County of San Francisco, 189 Fed., 943.

Des Moines City Railway Co. vs. City of Des Moines, 158 Fed., 854.

INTERLOCUTORY INJUNCTION WAS PROPERLY GRANTED TO COMPLAINANTS IN THIS CASE.

The allegations of the Bill of Complaint show fully the facts which entitle Complainants to an interlocutory injunction, among other things that said Tax Collectors are threatening to and will immediately proceed to collect said license taxes and will seize and sell the property of each of Complainants and of each and every other person in like situation, and will enter upon their stocks and warehouses and will interrupt and interfere with their businesses and seize their stocks of wares, goods and merchandise, and will cause each of them loss of business, trade and customers, and will sell such property at forced sales and at sacrifices, and will not only cause them loss and damage by reason of seizing and taking their property, but will also, on account of the peculiar character and uses of the property, to-wit: their stocks of merchandise wherewith and whereby they exercise, carry on and maintain their businesses

and occupations, and the injury to their businesses and occupations and credit and loss of customers and because of the repeated and numerous seizures and sales of such property and because such a multiplicity of litigation would be inflicted on and caused to each of them and their businesses and occupations would be so interrupted, damaged and destroyed and such tremendous amounts of moneys, costs and expenses would be inflicted upon them or collected out of them or their property seized and sold therefor, and the damages resulting would be so difficult or impossible of ascertainment and computation that they would have no adequate remedy at law. Also that said Defendant Prosecuting Officers are threatening to prosecute Complainants for nonpayment of said license taxes and such prosecution will affect the property and property rights of each of said Complainants, will prevent them from enjoying, using or disposing of their property or transacting their business, as aforesaid, and will greatly lessen the value of their property and will prevent them from disposing of much property now in their possession, as aforesaid, and will prevent them from acquiring and disposing of like property in the future, and will prevent them from carrying out their contracts or representations in connection with property already sold or disposed of, as aforesaid; and that each of said Complainants and persons in like situation will be frequently and constantly arrested, restrained and deprived of their liberty and prosecuted in the Courts of the United States, and that they have no adequate relief at law, and that all of said damages and injuries will be inflicted immediately unless restrained and enjoined by this Court.

See paragraphs XXI and XXII of the Bill of Complaint. Printed Record, pages 21-23.

In the leading case of Ex-Parte Young, hereinbefore cited and quoted from, the matter came up in pursuance of and upon the enforcement of an order of the Circuit Court of the United States for the District of Minnesota, in the case of Charles E. Perkins, et al., against Edward T. Young, Attorney General of the State of Minnesota, et al. In that case a restraining order was granted and afterwards a temporary or interlocutory injunction was granted. One of the grounds of objection made

in the Circuit Court and in the Supreme Court of the United States was that the interlocutory injunction should not have been granted because the parties interested had a plain and adequate remedy at law. That the proper way to test the constitutionality of the act was to disobey it at least once and stand a prosecution in the Criminal Court of the State and so have the law tested. The Supreme Court, however, states that it is not necessary for Complainant to await such prosecution but that a Court of Equity has jurisdiction to enjoin the enforcement of such unconstitutional statute and that the granting of an interlocutory injunction is proper.

Ex-Parte Young, 209 U. S., 163; 52 L. Ed. 730.

We submit that it is clear upon well established principles that the interlocutory injunction was properly granted to Complainants in this case. If it had not been granted, they would have been greatly and irreparably damaged and injured, while the granting of the interlocutory injunction could not materially damage or injure the Defendants or anyone else. If it should be finally decided that these license taxes are constitutional and valid, the Complainants and all other merchants doing business in Florida, or persons required by the statute to pay them would have to pay them, and the property of all such persons may be summarily seized by the Tax Collectors and sold to collect such taxes, or such persons may be prosecuted by the Prosecuting Officers of this State so that obviously there is no danger of any loss or damage to the Defendants or any one by granting of the interlocutory injunction, whereas the refusal of the interlocutory injunction would have inflicted great injury and damage upon, and possibly have been ruinous to Complainants and many other persons in like situation.

It is well settled that in such a case, even if it be doubtful whether the ultimate decision of the case will be in favor of Complainants, yet an interlocutory injunction will be granted.

The law upon this subject is thoroughly considered and stated with particular clearness, and many authorities upon the

subject are cited in the case of Wilmington City Railway Company vs. Taylor, 198 Fed., 159, 197, and we therefore quote a portion of the opinion in that case.

"On the question of the circumstances determinative of the propriety of granting or withholding preliminary injunctions there are certain well-settled principles. The granting or refusal of a preliminary injunction, whether mandatory or preventive, calls for the exercise of a sound judicial discretion in view of all the circumstances of the particular case. Regard should be had to the nature of the controversy, the object for which the injunction is sought, and the comparative hardship or convenience to the respective parties involved in the awarding or denial of the injunction. The legitimate object of a preliminary injunction, preventive in its nature, is the preservation of the property or rights in controversy until the decision of the case on a full and final hearing upon the merits, or the dismissal of the bill for want of jurisdiction or other sufficient cause. The injunction is merely provisional. It does not, in a legal sense, finally conclude the rights of parties, whatever may be its practical operation under exceptional circumstances. In a doubtful case, where the granting of the injunction would, on the assumption that the Defendant ultimately will prevail, cause greater detriment to him than would, on the contrary assumption, be suffered by the Complainant, through its refusal, the injunction usually should be denied. But where, in a doubtful case, the denial of the injunction would, on the assumption that the Complainant ultimately will prevail, result in greater detriment to him than would, on the contrary assumption be sustained by the Defendant through its allowance, the injunction usually should be granted. The balance of convenience or hardship ordinarily is a factor of controlling importance in cases of substantial doubt existing at the time of granting or refusing the preliminary injunction. Such doubt may relate either to the facts or to the law of the case, or to both. It may equally attach to or widely vary in degree as between the showing of the Complainant and that of the Defendant, without necessarily being determinative of the propriety of allowing or denying the injunction. Where, for instance, the effect of the injunction would be disastrous to an established and

legitimate business through its destruction or interruption in whole or in part strong and convincing proof of right on the part of the Complainant and of the urgency of his case is necessary to justify an exercise of the injunctive power. Where, however, the sole object for which an injunction is sought, is the protection of property or legitimate business, or the maintenance of the status quo, until the question of right between the parties can be decided on final hearing, the injunction properly may be allowed, even though there be serious doubt of the ultimate success of the Complainant. There is abundant authority in support of these views. Russell vs. Farley, 105 U. S., 433, 438; 26 L. Ed., 1060. City of Newton, vs. Lewis, 79 Fed., 715; 25 C. C. A., 161. Glascott vs. Lang, 3 Myl. & C., 451, 455. Hadden vs. Dooley, 74 Fed., 429, 431; 20 C. C. A., 494. Great Western R. Co. vs. Birmingham, etc., R. Co., 2 Phil. Ch., 597. Shrewsbury & Chester R. Co. vs. Shrewsbury R. Co., 1 Sim. N. S., 410, 426, 427, 432. Denver & R. G. R. Co. vs. United States, 124 Fed. 156; 59 C. C. A., 579. Buskirk vs. King, 72 Fed., 22; 18 C. C. A., 418. Sanitary Reduction Works vs. California Reduction Co. (C. C.) 94 Fed., 693. Southern Pac. Co. vs. Earl, 82 Fed., 690; 27 C. C. A., 185. New Memphis Gas & Light Co. vs. Memphis (C. C.) 72 Fed., 952. Indianapolis Gas Co. vs. Indianapolis (C. C.) 82 Fed., 245. Georgia vs. Brailsford, 2 Dall., 402; 1 L. Ed., 433."

See Wilmington City Railway Company vs. Taylor, 198 Fed., 197.

The Bill of Complaint is sworn to positively in this case by three different persons. This, of course, is the same as three different affidavits in support of the application for an interlocutory injunction. Interlocutory injunction may be granted upon the sworn Bill of Complaint without other affidavits.

City of Kankakee vs. American Water Supply Company, 199 Fed., 758.

Even where there is an answer to the Bill of Complaint filed, and even where the answer is under oath in response to the

requirements of the bill, the Court will grant an interlocutory injunction, or will refuse to dissolve a temporary injunction already granted, if, under the circumstances of the case, it seems proper to protect the Complainants or preserve the status until final hearing, or if for any other reason it seems proper to the Court so to do.

Linton vs. Benham, 6 Fla., 533.
Carter vs. Bennett, 6 Fla., 214.
Godwin vs. Phifer, 51 Fla., 441; 41 So., 597.
Holt vs. H. S. Co., 56 Fla., 801; 47 So., 934.

There are no answers or affidavits filed by Defendants herein, but so strong is the rule that in case of doubt that an interlocutory injunction will be granted to protect and preserve rights that may be endangered that even where there are conflicting affidavits and it appears that the Complainants may suffer serious injury or damage if the interlocutory injunction is not granted, it should be granted, and thus the status be preserved and the rights of Complainants be protected, until evidence can be taken and the case can be determined upon the merits.

Carter vs. Forten, 172 Fed., 722, 729.

DEFINITION OF PHRASE "WHO SHALL OFFER WITH MERCHANDISE, ETC."

To offer merchandise for sale or to offer anything with merchandise which shall be bargained or sold does not require any distinct offer. Thus the Florida Statute concerning the offering with merchandise bargained or sold any coupons, etc., does not require that the merchant shall make any distinct offer of the coupon apart from the package of merchandise in which it is contained or to which it is attached or with which it is delivered. It is well settled concerning such statutes that the article may be "offered" by merely having the article for sale or delivery, or keeping the article in the store or store-room of the merchant, or holding the same for disposition in connection

with the business of selling and does not require any actual proffer to some particular person. Hence in this case such "offer" applies to all the transactions mentioned in the Bill of Complaint and to all the coupon or insert goods held or dealt in by Complainants or any other merchants.

U. S. vs. Dodge, 25 Fed. Cases, 879.
State vs. Dunbar, 13 Oregon, 591; 11 Pac., 298, 299.
Willis vs. Standard Oil Co., 50 Minnesota, 290; 52 Northwestern, 652, 653.

SAID PROVISIONS OF SECTION 35 OF SAID STATUTE OF FLORIDA, COMPLAINED OF IN THE BILL, ARE UNCONSTITUTIONAL, ILLEGAL AND VOID.

Said provisions of Section 35 of said Statute of Florida are unconstitutional and in violation of several of the articles of the Constitution of the United States, as particularly specified in the Bill of Complaint. In discussing in this brief said violations of the constitution we shall deal with them in such order as seems most convenient for argument, without following exactly the order in which they are stated in the bill, and we shall first present and submit the proposition that said section of said statute is in violation of the Fourteenth Amendment to the Constitution of the United States.

SAID PROVISIONS OF SAID STATUTE ARE CONTRARY TO AND IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The enactments and provisions of said Section 35 of said Statute of Florida providing for and requiring the payment of said license taxes in the Bill of Complaint mentioned and complained of are, we submit, clearly unconstitutional, illegal and void in that they attempt to abridge the privileges and immunities of Complainants and other citizens of the United States

and to deprive Complainants and other persons of liberty and property without due process of law, and to deny to Complainants and other persons within the jurisdiction of said State the equal protection of the law in the particulars in said Bill of Complaint specified in paragraph XIV thereof, Section 2, subdivisions A to N, inclusive. Record, pages 16-19. In considering these matters of violation of the Fourteenth Amendment we shall first consider the proposition that the attempted or pretended classification under and upon which said license taxes are imposed and based is not founded upon any reasonable grounds or just distinctions, but is arbitrary and discriminating.

THERE IS NO JUST OR REASONABLE CLASSIFICATION UPON WHICH SAID LICENSE TAXES ARE BASED.

As stated in the Bill of Complaint, there is no just or reasonable basis of classification upon which said license taxes are based, but the attempted or pretended classification is arbitrary and discriminating and not based upon any just distinction. These propositions are stated in paragraph XIV of the Bill of Complaint, subdivision A, B and C, pages 16-17 of Printed Record. Such illegal classification was the principal ground upon which the Washington Statute was held unconstitutional and in violation of the Fourteenth Amendment to the Constitution of the United States, and interlocutory injunction against the Attorney General of said State, the Prosecuting Attorney of Spokane county and the County Treasurer of said county was granted by the Judges in the case of Little vs. Tanner as Attorney General, et al., in the District Court of the United States for the Eastern District of Washington, Northern Division, 208 Fed., 605, hereinbefore cited and also in this case of ours in the Court below.

Record, 38-44; 214 Fed., 827.

In said Section 35 of said Florida Statute there is a license tax imposed upon merchants, druggists and storekeepers generally, to-wit: for the first thousand dollars, or fraction thereof, of stock of merchandise three dollars in each county and for

each place of business, and one and one-half dollars for each additional thousand, or fraction thereof, but dealers in merchandise at wholesale only shall pay a license tax of one and one-half dollars for each one thousand dollars of their stock of merchandise. In addition to these regular license taxes every person, firm or corporation who shall offer with merchandise bargained or sold any coupon, profit-sharing certificate, etc., redeemable in premiums, is required to pay annually a State license tax of five hundred dollars and a county license tax of two hundred and fifty dollars in each and every county in which said business is conducted or carried on, and the same taxes for each place of business, and is required to pay the same amounts of license taxes where any such coupons, etc., shall be offered with merchandise bargained or sold, redeemable by any other person, firm or corporation for each other person, firm or corporation who may redeem the same, and it is expressly stated that the license taxes prescribed in said section shall be in addition to other licenses prescribed in the act. It is further provided in said section that merchants using trading stamps shall pay a license tax of two hundred and fifty dollars for each place of business where they use such stamps.

It will be seen from the above provisions that certain license taxes are imposed upon merchants, druggists and storekeepers generally in proportion to the valuations of their stocks of merchandise, then in addition to said general license taxes enormous additional license taxes are imposed upon each such person, firm or corporation who shall offer with merchandise bargained or sold any coupon, profit-sharing certificate or other evidence of indebtedness or liability redeemable in premiums. Manifestly these license taxes are not license taxes on the occupation or business, but are license taxes on mere incidents of the business discriminating and imposing enormous additional license taxes on merchants who advertise their business in a certain way or who give certain discounts or premiums for cash sales, or who give profit-sharing certificates to their customers, or who give certain articles or presents as methods of increasing their business by obtaining the good will of their customers or additional trade by certain inducements. These methods of advertising or of giving discounts or premiums or

inducements for trade contain nothing in them of a gambling nature or character and nothing injurious to the health, morals or welfare of the community, as is manifest from the very nature of the transactions, and as has been established by numerous decisions of the State Courts. The character and the application of these methods of dealing and instances of many of the articles, including a great variety of merchandise of different sorts, as well as many other articles of merchandise not specified, and the exorbitant, oppressive and prohibitory character and amount of such license taxes are set out in detail in paragraphs II, III, IV, V, VI, VII, VIII, IX and X of the Bill of Complaint. We submit that it is perfectly manifest upon the face of the statute that the license taxes complained of are not based upon any just or reasonable classification of different kinds of businesses or occupations, but are merely arbitrary, unjust and unreasonable impositions upon merchants who advertise their goods or business in a certain way, or give certain discounts or profit-sharing certificates, or inducements or premiums to induce trade or build up their business, or to induce cash purchases, and to make their businesses more beneficial and profitable. The provisions of the statute in substance do not really constitute taxation at all, but are attempts, under the pretense of taxation, unfairly and unjustly to prohibit Complainants and all others in like situation from advertising their business by certain methods and increasing or building up their business, or by increasing cash purchases in a certain method, none of which are harmful or injurious to the community, but are beneficial to their customers as well to themselves.

Such methods of advertising business or inducing trade or securing the good will of customers are not any new or artificial schemes or devices. They are a mere development of immemorial usage of trade and are of precisely the same nature as when the storekeeper gave a ginger snap or an apple or anything else to a child coming in to purchase, or gave a present to a purchaser, or a discount for cash. Such inducements to trade and customers or to cash purchasers have always been much used by merchants; and when now the manufacturer or packer of soap or starch or coffee or flour or tobacco, or any

other article, puts coupons in the packages or in the wrappers thereof, whereby a purchaser purchasing a sufficient number of the packages to accumulate a sufficient number of such coupons or profit-sharing certificates to get some article of value in exchange therefor, or where the Florida merchant gives with articles sold by him coupons or certificates or cash register slips or memoranda, or the like, redeemable by himself, as alleged in paragraph IV of the Bill of Complaint, it is merely a natural growth of the immemorial custom above referred to of merchants giving something extra or some article or present or discount with goods sold, which has merely taken more extensive and more regular and systematized forms, in the same kind of growth and development that is applied to all the systems and modes of business with the natural growth of the business of the country.

The Legislature might as well impose these license taxes on any merchant who advertises in a newspaper or any merchant who gives any discount whatever for cash or on account of the goods that a customer purchases or the amount of trading that a purchaser does with him. The prohibitory license taxes on profit-sharing certificates seems broad enough to prevent any practice or development of profit sharing in any mercantile business and to stop all progress in a direction generally recognized as one of great improvement and much promise for the public welfare. The pretended classification upon which said license taxes are based is entirely arbitrary, unreasonable and unjust.

SUCH CLASSIFICATION HAS BEEN REPEATEDLY HELD BY THE SUPREME COURT OF THE UNITED STATES TO BE UNCONSTITUTIONAL AND IN VIOLATION OF THE FOURTEENTH AMENDMENT.

"But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this." * * * "Classification to relieve a law from the charge of a denial of equal protection can not be made arbitrarily, but must be based

upon some difference which bears a just and proper relation to the attempted classification."

Gulf, Colorado & Santa Fe Railway Company vs. Ellis, 165 U. S., 150-159; 41 L. Ed., 666-669.

"Accepting, however, the full force of the general language in which the statute is couched, it appears that a classification is attempted between stock yards doing a large and those doing a small business. The express and only basis of classification is in the amount of business done by the two classes." * * *

"Clearly the classification is based solely on the amount of business done, and without any reference to the character of value of the services rendered." * * *

"But while recognizing to the full extent the impossibility of an imposition of duties and obligations mathematically equal upon all, and also recognizing the right of classification of industries and occupations, we must nevertheless always remember that the equal protection of the laws is guaranteed, and that such equal protection is denied when upon one of two parties engaged in the same kind of business and under the same conditions burdens are cast which are not cast upon the other." * * *

"This statute is not simply legislation which in its indirect results affects different individuals or corporations differently, nor with those in which a classification is based upon inherent differences in the character of the business, but is a positive and direct discrimination between persons engaged in the same class of business, and based simply upon the quantity of business which each may do. If such legislation does not deny the equal protection of the laws, we are unable to perceive what legislation would."

Cotting, et al., vs. Godard, as Attorney General of the State of Kansas, 183 U. S., 79, 103, 104, 112; 46 L. Ed., 92, 106, 109, 110.

"The Fourteenth Amendment, in declaring that no State shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its juris-

diction the equal protection of the laws, undoubtedly intended, not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the Courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses."

Barbier vs. Connolly, 113 U. S., 27, 31; 28 L. Ed., 923, 924.

Another very strong and applicable case sustaining our contentions in this matter is that of Southern Railway Company vs. Greene wherein the Supreme Court of the United States reversed the Supreme Court of Alabama and held an Alabama Statute imposing a franchise tax to be in violation to the Fourteenth Amendment to the Constitution of the United States. We insert some quotations from that case:

"The equal protection of the laws means subjection to equal laws, applying alike to all in the same situation."

"It remains to consider the argument made on behalf of the State of Alabama, that the statute is justified as an exercise of the right of classification of the subjects of taxation, which has been held to be entirely consistent with the equal protection of the laws guaranteed by the Fourteenth Amendment. It is argued that the imposition of special taxes upon foreign corporations for the privilege of doing

business within the State is sufficient to justify such different taxation, because the tax imposed is different, in that the one imposed on the domestic corporation is for the privilege of being a corporation, whereas the one on the foreign corporation is for the privilege of such corporation to do business within the State. While reasonable classification is permitted, without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed, and classification can not be arbitrarily made without any substantial basis. Arbitrary selection, it has been said, can not be justified by calling it classification. Gulf, C. & S. F. R. Co. vs. Ellis, 165 U. S., 150, 155, 165; 41 L. Ed., 666, 668, 671; 17 Sup. Ct. Rep., 255. Cotting vs. Kansas City Stock Yards Co. (Cotting vs. Godard), 183 U. S., 79; 46 L. Ed., 92; 22 Sup. Ct. Rep., 30. Connolly vs. Union Sewer Pipe Co., 184 U. S., 540, 559; 46 L. Ed., 679, 689; 22 Sup. Ct. Rep., 431.

"It is averred in the complaint, and must be taken as admitted, that there are other corporations of a domestic character in Alabama carrying on the railroad business in precisely the same way as the plaintiff. It would be a fanciful distinction to say that there is any real difference in the burden imposed because the one is taxed for the privilege of a foreign corporation to do business in the State and the other for the right to be a corporation. The fact is that both corporations do the same business in character and kind, and under the statute in question a foreign corporation may be taxed many thousands of dollars for the privilege of doing, within the State, exactly the same business as the domestic corporation is permitted to do by a tax upon its privilege, amounting to only a few hundred dollars. We hold, therefore, that to tax the foreign corporation for carrying on business under the circumstances shown, by a different and much more onerous rule than is used in taxing domestic corporations for the same privilege, is a denial of the equal protection of the laws, and the plaintiff being in position to invoke the protection of the Fourteenth Amendment that such attempted taxation under a Statute of the State does violence to the Federal Constitution."

Southern Railway Co. vs. Greene, 216 U. S., 400, 412, 417, 418; 54 L. Ed., 536, 539, 541, 542.

THE SUPREME COURT OF FLORIDA HOLDS THAT SUCH CLASSIFICATION RENDERS THE STATUTE UNCONSTITUTIONAL AND VOID UNDER THE CONSTITUTION OF THE UNITED STATES AS WELL AS THE CONSTITUTION OF FLORIDA.

In a recent case decided in 1908 by the Supreme Court of Florida, that Court held and declared to the fullest extent the doctrine that a statute of Florida imposing burdens or affecting property rights based upon arbitrary classifications or classifications not reasonable and affecting persons engaged in the same occupations and discriminating where there are not such reasonable and practicable differences in the carrying on of the business as to warrant such differences of classification, that such an act is unconstitutional and void under the Fourteenth Amendment of the Constitution of the United States, as well as under the Constitution of Florida. The Supreme Court of Florida in that case went much further in the application of the doctrine than the Court is asked or required to do in the present case. In that case the Supreme Court of Florida held that certain burdens imposed by the statute upon a railway company not imposed upon other carriers was a classification not based upon reasonable or sufficient differences and was unconstitutional and void. There might be a much stronger argument made in favor of the legality of a classification which separated railways from certain boats or other water lines of transportation, or from individual carriers or the like, than can be made to sustain the Statute of Florida in this case imposing enormous burdens of taxation for license exactions upon merchants who advertise or offer inducements in their business by coupons or the like and which are not imposed on or exacted of merchants doing the same kind of business but who do not advertise or offer such inducements. The Supreme Court of Florida also expressly held in that case that the decisions of the Supreme Court of the United States laying down principles as to legality of classifications are controlling as to the Florida

Statute, since it involves a Federal question and the effect of the Fourteenth Amendment to the Constitution of the United States.

"2. The provision of the State Constitution that no person shall be deprived of property without due process of law, and the provisions of the Fourteenth Amendment of the Constitution of the United States as to property rights, extend to the property held and used by corporations, since the beneficial ownership of such property is in natural persons, and the law forbids the doing by indirection that which is forbidden to be directly done.

"3. The legality of classifications adopted for legislative regulation may be determined with reference to the due process of law provision of the State Constitution; but as such determination involves a Federal question the decisions of the Supreme Court of the United States control.

"4. Classifications adopted for legislative regulation should have some just relation to, or reasonable basis in, essential differences of conditions and circumstances with reference to the subject regulated, and should not be merely arbitrary; and all similarly situated or having similar legal duties and obligations in regard to the subject regulated, should be included in one class, at least where there are no practical differences that are sufficient to legally warrant a further or special classification in the interest of the general welfare.

"5. The legal duties of persons, firms or corporations operating railroads may be of a peculiar nature and essentially different from the duties of other common carriers, and as to such matters they may be separately classified for purposes of legislative regulation.

"6. Where the subject of regulation as in Chapter 5424, Acts of 1905, is payment for goods lost in transit by a common carrier, a subject as to which the legal duties of all common carriers are similar, and there appears to be no reasonable basis for imposing the burden of the regulation upon railroads alone, a statute making such regulation applicable to railroads only, provides for an unreasonable classification that in effect denies to those operating railroads due process of law and the equal protection of

laws in violation of constitutional rights, and such statute is inoperative."

Seaboard Air Line Railway vs. Abe Simon & Co., 56 Fla., 545; Fla. Reports 56, 1908.

UPON THE STATEMENTS AND ADMISSIONS OF THE PLEADINGS AND PROCEEDINGS IN THIS CASE DEFENDANTS ADMIT THAT THERE IS NOTHING IN THE USE OF SUCH COUPONS, PROFIT-SHARING CERTIFICATES, ETC., THAT IS PREJUDICIAL TO PUBLIC HEALTH, SAFETY, MORALS OR WELFARE OR THAT BRINGS IT UNDER THE POLICE POWER OF THE STATE OR JUSTIFIES OR AUTHORIZES ITS PROHIBITION OR SUPPRESSION DIRECTLY OR BY LICENSE TAXES, AND ADMIT THAT SAID LICENSE TAXES ARE NOT IMPOSED FOR PURPOSES OF REVENUE OR TAXATION.

The facts stating how such coupons, profit-sharing certificates and the like are issued and used in the matters involved in this case are stated in detail in the Bill of Complaint.

Bill of Complaint, paragraphs 3, 4, 5, 6, 7, 8, 9, 10, Record pages 7 to 12.

It is also expressly alleged and stated in the Bill of Complaint that they in no way so affect the public health, safety, convenience, comfort, morals or welfare as to be subject to police control or regulation by said State or the Legislature thereof and that the said provisions of said statute and the said imposition of said license taxes are in no way a legitimate or lawful exercise of any police power of said State or of the Legislature thereof.

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Bill of Complaint, paragraph 7, Record page 11.

Bill of Complaint, paragraph 14, subdivision K, Record page 18.

It is further expressly alleged in the Bill of Complaint as follows:

> "That by the use of the system of delivering such coupons, slips, certificates or other tokens with merchandise sold, the merchant is enabled to give a discount to purchasers or to give an additional value to purchasers in the shape of the premiums or articles sold for or exchanged for such coupons, slips, certificates or other tokens, and the purchasers of such articles of merchandise are substantially benefited thereby."
>
> Bill of Complaint, paragraph 6, Record page 11.

It is also alleged that said annual or semi-annual license taxes, though under the guise of a revenue measure and taxation, are, in fact, not such, and are not imposed for the purpose of revenue or taxation, but are intended for the purposes of prohibiting and preventing the doing of business and the enjoying and disposing of property and the exercising of the rights of property and of liberty and of having the equal protection of law to which Complainants and all other persons in like situation are entitled and in which they are protected by said Article 14 of the Constitution of the United States of America.

> Bill of Complaint, paragraph 14, subdivision I, Record page 18.

It is also alleged in said Bill of Complaint that said annual or semi-annual license taxes are prohibitory and not productive of revenue and will prohibit and prevent Complainants and all other persons in like situation from using such coupons, profit-sharing certificates, etc. Also, the detailed facts which substantiate these allegations are stated in the Bill of Complaint.

> Bill of Complaint, paragraph 14. Subdivisions F, G, H and I, Printed Record pages 27, 28, 29.
>
> Bill of Complaint, paragraph 12, Record pages 22, 23 and 24.

There has been no answer filed by any of the Defendants

and there is no denial of any of the allegations of the Bill of Complaint, but, on the contrary, the Defendants having filed only a motion to dismiss the Bill for want of jurisdiction and for want of equity, etc., admit all the allegations of said bill. The Bill of Complaint states, in detail, the facts concerning the use of such coupons, profit-sharing certificates, etc., and the manner and methods of their use, which clearly show that there is nothing therein that comes under the police power. And it is also expressly alleged in the Bill of Complaint that the said use of said coupons, profit-sharing certificates, etc., is in no way prejudicial to public health, safety, morals or welfare.

The Bill of Complaint also states and shows the enormous and prohibitory amounts and character of these so-called license taxes, and expressly alleges that Complainants will not be able to carry on their respective businesses and to use such coupons and profit-sharing certificates, etc., if they have to pay said prohibitory so-called license taxes, and the bill alleges that, in fact, no revenue will be derived from said so-called taxes, and alleges that said provisions of said statute were not exacted for the purposes of taxation or collecting any revenue, but for the purpose of prohibiting and preventing the use of such coupons, profit-sharing certificates and so forth. We have cited above various paragraphs and subdivisions of the Bill of Complaint containing these statements and allegations.

Said allegations of the Bill of Complaint are allegations of the facts in detail and of the ultimate facts which are material in the case, and they are admitted by the motion to dismiss the bill. No argument can be made, or is admissible, for Defendants herein that perchance that in some part of the business that may be done, wherein coupons or profit-sharing certificates are offered or given with merchandise, that there may be the intervention of some trading-stamp company that may increase the price of the merchandise, or any other contention that the business may be in any way injurious to the people of the State or may be subject to the police power. The Defendants have made no answer setting up any such allegations. There is nothing in the record from which the Court can infer

anything of the sort, and there are the positive allegations of the Bill of Complaint which are not matters of opinion or of conclusion but which state the facts and state that in fact, by the use of such coupons or profit-sharing certificates, the merchant gives additional value to purchasers and the purchasers of such articles are materially benefited thereby. The facts are stated in the Bill of Complaint showing that there is no element of gambling or chance involved. That the purchasers select the articles which they receive as premiums from catalogues that are furnished, or where there is a discount or rebate, that it is known and fixed in every instance in advance of the purchase what such discount or rebate is to be or the amount thereof. Therefore, there can not be any argument that perchance there may be facts to sustain the statute when not only there is no answer setting up any such facts, but when the bill in its detailed statements and in its general, ultimate statements shows and alleges the contrary to any such hypothetical contentions or arguments on behalf of Defendants.

It is also positively alleged in the bill in detail that these license taxes are, in fact, prohibitory. That the Complainants, in fact, can not do the business mentioned, which they were previously doing and which was a part of their existing business, and pay such license taxes.

See Bill of Complaint, paragraph 14, subdivisions F, G, Printed Record pages 17 and 18.

Also paragraph 12, Printed Record pages 13, 14 and 15.

It is also further alleged in the Bill of Complaint that these license taxes are not productive of revenue, and are not imposed for the purpose of revenue or taxation, but will prohibit Complainants and all persons in like situation from doing business and using such coupons, profit sharing certificates, etc., as in the Bill of Complaint more particularly set forth.

See Bill of Complaint, paragraph 14, subdivisions G, H and I, Printed Record page 18.

All of the allegations of the Bill of Complaint, above men-

tioned, as well as the detailed facts in the bill which support same, are allegations of fact and are so stated in the bill; they are not matters of conclusion or opinion or stated as such, but are detailed facts and the ultimate facts material to the case and are admitted by the motion to dismiss.

The allegations of the Bill of Complaint as to the character of the business and use of such coupons, profit-sharing certificates, etc., and that it contains no element of gambling and that there is nothing in connection therewith or in the use of the same that is prejudicial to public health, safety, morals or welfare, and that, in fact, there is thereby given to purchasers either a discount or an additional value in premiums or articles and that the purchasers of such articles of merchandise are substantially benefited thereby, are allegations of fact admitted by the motion to dismiss.

American School of Magnetic Healing vs. McAnnulty, 187 U. S., 94, 103; 47 L. Ed., 90, 94.

So the allegations that these enormous license taxes which are stated in detail in the Bill of Complaint with detailed statements of facts showing that they are necessarily prohibitory, and followed up by the positive allegations in the bill, not as matters of opinion and conclusion, but as ultimate facts, that said license taxes, if enforced, will, in fact, preclude and prevent Complainants and all persons in like situation from using such coupons, profit-sharing certificates, etc., from doing such business, and that, in fact, they are prohibitory and will produce no revenue and in fact are not imposed for the purpose of revenue or taxation are all allegations of fact which are admitted by the motion to dismiss.

City of St. Louis vs. Knapp, etc., Co., 104 U. S., 658, 661; 26 L. Ed., 883, 884.

The allegation of the intent or purpose with or for which a thing was done is an allegation of fact, not an opinion or conclusion. Thus a mere general allegation that a certain act was fraudulent may be merely a matter of opinion or conclusion,

but an allegation that something was done with the intent to defraud, especially where connected with other allegations as to the facts, is not a statement of a conclusion or opinion, but is the statement of a fact which is admitted by demurrer or motion.

Platt vs. Mead, 9 Fed., 91.

So, in the present case, there being no answer and no evidence upon which to base any argument for Defendant that there is anything in the use of such coupons, profit-sharing certificates, etc., that is in any way injurious to the public, and the contrary being expressly alleged in the Bill of Complaint, with facts alleged to sustain the same, and it being shown by the detailed facts and by the general allegations of the Bill of Complaint that the license tax will not and can not produce any revenue, but is prohibitory and will prevent the doing of any such business, or the use of any such coupons or profit-sharing certificates, and that the act in fact is not intended for purposes of taxation or producing revenue, the Appellants have no standing or basis for any contrary contention. In point of fact they have no standing here, under the pleadings, to make any contention excepting what they really relied on in the Court below and upon which they must stand here—namely that the Court had no jurisdiction because the case was in fact a suit against the State or that there was no jurisdiction in a Court of Equity to grant any relief in the premises, even though the allegations of the Bill of Complaint showing the unconstitutionality of the statute be admitted to be true and correct.

VERY MANY DECISIONS OF FEDERAL COURTS AND OF SUPREME COURTS OF MANY STATES HOLD SUCH CLASSIFICATION AND COUPON TAXES AS INVOLVED IN THIS CASE UNCONSTITUTIONAL AND VOID.

It is established by the overwhelming weight of authority, that such pretended classification and such attempted license taxes on account of using coupons, certificates or the like, as made in this case, are unconstitutional and void.

"A city ordinance making it unlawful for any person to sell goods and merchandise by selling trading stamps to merchants for delivery to their customers with purchases, without paying an annual license tax of $200, whether or not authorized by the city's charter, is in violation of the rights secured to citizens affected thereby by the Fourteenth Amendment to the Constitution of the United States and void; being neither a legitimate exercise of the taxing power, nor a reasonable police regulation."

Ex-Parte Hutchinson (Circuit Court D. Oregon), 137 Fed., 950.

"A city ordinance imposing a license tax of $600 per year on any person selling trading stamps to merchants, in addition to $100 per year on each merchant using trading stamps in his business, is not one for the purpose of providing revenue, but is clearly intended to prohibit the use of such stamps, and is void, as an abridgment of the privileges of citizens to engage in a legitimate business, in violation of the Fourteenth Constitutional Amendment."

Ex-Parte Hutchinson (Circuit Court D. Washington), 137 Fed., 949.

Humes vs. City of Little Rock, 138 Fed., 929.

"The use of trading stamps in retail merchandising business is legitimate, and an ordinance imposing an excessive license fee on merchants using such stamps, with the evident purpose of preventing such use, is unconstitutional and void, and a Complainant whose contract rights are injuriously affected thereby is entitled to an injunction to restrain its enforcement."

Spearing & Hutchinson Company vs. City of Tacoma, et al., 190 Fed., 682.

MASSACHUSETTS DECISIONS.

The principles upon which such statutes are unconstitutional have been very clearly and fully stated in several different cases by the Supreme Court of Massachusetts.

In the case of O'Keefe vs. City of Somerville the doctrine

is stated by the Supreme Court of Massachusetts as follows:

"Even if the Legislature might constitutionally impose an excise tax upon the business of selling articles in the usual way, it has not attempted to do so, and this statute, if it were construed in reference to the general business of selling alone, would be unreasonable and unconstitutional, because it would impose a tax upon some vendors and not upon others. We are therefore brought to the question whether the peculiar way of selling, to which the statute relates, involves a material difference in the nature of the business, such as to warrant the imposition of an excise tax on that account. The only difference referred to is the giving or delivering, as a part of the sale or in connection with it, of a stamp or other similar devise, which represents an additional right of property. Because this is entirely legitimate (see cases above cited) the attempt to tax it, as a peculiar kind of sale, is 'a discrimination founded upon an immaterial fact,' which renders such a statute invalid. Minot vs. Winthrop, 162 Mass. 113-122; 38 N. E. 512; 26 L. R. A. 259. Taking the acts referred to in the broad terms of the description in the statute, they are not dependent for their legality upon the legislative will, nor do they call for legislative regulation. They are performed in the exercise of a natural right, and are not in any sense rights or privileges conferred by law. If these stamps were used in such a way as to constitute a lottery or game of chance, the use would be punishable. But this statute purports to deal with such methods of sale as appeared in Com. vs. Sisson, 178 Mass. 578; 60 N. E. 385, and in other cases above cited. One of the reasons why these methods are allowable is found in the familiar principle that constitutional liberty means 'the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation.' The restrictions upon conduct which may be imposed in the exercise of the police power include everything that may be necessary in the interest of the public health, the public safety, or the public morals, and they include nothing more. These

doctrines have often been discussed and elaborated, and it is unnecessary to consider them at length in this case. In applying them to the business mentioned in this statute, no reason appears for the imposition of an excise tax upon the business of selling articles with an accompaniment of stamps which entitle the vendee to other property."

O'Keefe vs. City of Somerville, 190 Mass. 110; 77 N. E. 457, 459.

SUPREME COURT OF MASSACHUSETTS HOLDS SUCH STATUTES ARE IN VIOLATION OF FOURTEENTH AMENDMENT OF CONSTITUTION OF THE UNITED STATES.

The Supreme Court of Massachusetts has, in a recent opinion, clearly and strongly held and stated the doctrine and cited most of the leading cases as follows:

"The bill is drawn in broad terms, and it purports to forbid transactions that are not different in principle from contracts of sale which always have been held to be within the constitutional right of persons in every State to possess and acquire property, to transact legitimate business and to buy and sell and get gain. Const. U. S. Amend., art. 14; Declaration of Rights, art. 1. We can not doubt that the bill is intended only to include cases such as this Court held not to be included in St. 1884, c. 277, as amended by St. 1898, c. 576, now R. L. c. 214, par. 29. See Commonwealth vs. Sisson, 178 Mass., 578; 60 N. E., 385. The reasons for the decision in the case just cited would not apply to a decision as to the meaning of this bill.

"There is nothing in the conduct proposed to be prohibited that necessarily appeals to the gambling instinct or involves any element of chance. Such statutes and ordinances have been held unconstitutional by the highest Courts in a large number of States. State vs. Shugart, 138 Ala., 86; 35 South., 28; 100 Am. St. Rep., 17. City Council of Montgomery vs. Kelly, 142 Ala., 552; 38 South., 67; 70 L. R. A., 209; 110 Am. St. Rep., 43. Ex-Parte McKenna, 126 Cal., 429; 58 Pac., 916. Ex-Parte Drexel, Ex-Parte

Holland, 147 Cal., 763; 82 Pac., 429; 2 L. R. A. (N. S.), 588. Denver vs. Frueauff, 39 Colo., 20; 98 Pac., 389. Hewin vs. Atlanta, 121 Ga., 723, 731; 49 S. E., 765; 67 L. R. A., 795. Long vs. Maryland, 74 Md., 565; 22 Atl., 4; 12 L. R. A., 425; 28 Am. St. Rep., 268. State vs. Sperry & Hutchinson Co., 110 Minn., 378; 126 N. W., 120. State vs. Ramseyer, 73 N. H., 31; 58 Atl., 958. People vs. Gillson, 109 N. Y., 389; 17 N. E., 343; 4 Am. St. Rep., 465. People vs. Dycker, 72 App. Div., 308; 76 N. Y. Supp., 111. People vs. Zimmerman, 102 App. Div., 103; 92 N. Y. Supp., 497. Winston vs. Beeson, 135 N. C., 271; 37 S. E., 457; 65 L. R. A., 167. State vs. Dalton, 22 R. E., 77; 46 Atl., 234; 48 L. R. A., 775; 84 Am. St. Rep., 818. State vs. Dodge, 76 Vt., 197; 56 Atl., 983. Young vs. Commonwealth, 101 Va., 853; 45 S. E., 327. There are numerous similar decisions in the Federal Courts.

"The Court of Appeals of the District of Columbia, in its decisions in Lansburgh vs. District of Columbia, 11 App. D. C., 512, and in District of Columbia vs. Gregory, 35 App. D. C., 271, stands almost alone, although it has been followed by one or two Federal Judges, in reaching an opposite conclusion.

"The recent decision in Matter of Gregory, 219 U. S., 210; 31 Sup. Ct., 143; 55 L. Ed. —, has no bearing upon the question before us as the Judge who wrote the opinion was careful to put the decision upon grounds that have no relation to the validity of such provisions as those of this bill."

In Re: The Opinion of the Justices, 207 Mass., page 606; 94 N. E., 849.

SUPREME COURT OF CALIFORNIA HOLDS SUCH STATUTES CONTRARY TO CONSTITUTION OF THE UNITED STATES AND OF THE STATE.

In the cases of Ex-Parte Drexel and Ex-Parte Holland the Supreme Court of California sustained the contentions of the petitioners that such a statute was invalid and in violation of

the Fourteenth Amendment of the Constitution of the United States as well as in violation of the Constitution of the State of California. There is quite a full review of the decisions of the various Courts contained in said California case. The Court held in that case as follows:

> "We see nothing in such a stamp or coupon which is outside of the constitutional rights of citizens to make contracts concerning property, nothing which wrongfully interferes with the lawful rights of other persons, and nothing which the police power can reach as touching the public safety, the public health, or the public morals. Of course, contracts containing lotteries, advantages dependent upon chance, or any kind of gambling scheme, may be regulated or suppressed. But a trading coupon has none of these characteristics. It is not a lottery, its redemption does not depend upon chance; and it has no element of gambling of any kind. Its holder selects what goods he wants. He is not compelled to take what chance may give him, or to get nothing if the throw of the dice, or the event of some other gambling device, shall so determine. It is, therefore, a contract which under the principles above stated, the legislature has no constitutional power to prohibit, or to seriously interfere with under the guise of regulation; and as the act in question undertakes to do this, it is unconstitutional and void."
>
> Ex-Parte Drexel and Ex-Parte Holland, 147 California, 763; 82 Pac., 429; 2 L. R. A. (N. S.), 588.

THE COURT OF APPEALS OF NEW YORK HAS HELD SUCH STATUTES UNCONSITUTIONAL FOR REASONS VERY STRONGLY STATED.

Another leading case upon the subject is that of People vs. Gillson. The opinion of the Circuit Court of Appeals of New York, delivered by Mr. Justice Peckham, is a very clear and strong statement of the law upon the subject, and we make some quotations therefrom as follows:

> "The defendant here appeals for his protection to the

clause (among others) in the constitution which provides that no person shall be deprived of life, liberty, or property without due process of law. The meaning of this provision in our State Constitution has frequently been the subject of judicial investigation, and this Court has had occasion very recently to discuss it in quite a number of cases, and a further elaboration is not needed. The following propositions are firmly established and recognized. A person living under our constitution has the right to adopt and follow such lawful industrial pursuit, not injurious to the community, as he may see fit. The term 'liberty,' as used in the constitution, is not dwarfed into mere freedom from physical restraint of the person of the citizen, as by incarceration, but is deemed to embrace the right of man to be free in the enjoyment of the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare. Liberty, in its broad sense, as understood in this country, means the right, not only of freedom from servitude, imprisonment, or restraint, but the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation. These principles are contained and stated in the above languages in various cases, among which are Association vs. Crescent City Co., 1 Abb. (U. S.), 398; Slaughter-House cases, 16 Wall., 36-106; In re Jacobs, 98 N. Y., 98 (per Earl, J.); Bertholf vs. O'Reilly, 74 N. Y., 509 (per Andrews, J.); People vs. Marx, 99 N. Y., 377; 2 N. E. Rep., 29 (per Rapallo, J.). It is quite clear that some or all of these fundamental and valuable rights are invaded, weakened, limited, or destroyed by the legislation under consideration. It is evidently of that kind which has been so frequent of late—a kind which is meant to protect some class in the community against the fair, free, and full competition of some other class; the members of the former class thinking it impossible to hold their own against such competition, and therefore flying to the legislature to secure some enactment which shall operate favorably to them, or unfavorably to their competitors, in the commercial, agricultural, manufacturing, or producing fields. By the provisions of this act a man owning articles

of food which he wishes to sell or dispose of is limited in his powers of sale or disposition. A liberty to adopt or follow for a livelihood a lawful industrial pursuit, and in a manner not injurious to the community, is certainly infringed upon, limited, perhaps weakened or destroyed, by such legislation. It is certainly lawful to sell (as in this instance) coffee. It is an article of food, and is almost one of the necessaries of life to a large number of people. A person engaged as a retailer of coffee might very well think that he could greatly enlarge the amount of his trade by doing precisely what was done by the Defendant in this case; and that, while his profits on the same amount of coffee sold would be smaller than if he gave no present, yet, by the growth of his trade, his income at the end of the year would be more than by the old method. This statute, if valid, steps in to prevent his adopting such a course to procure trade, and from it to secure an income and livelihood for himself and family. He is thus restrained in the free enjoyment of his faculties, which he ought to have the right and liberty to use in the way of creating or adopting plans for the increase and growth of his trade, business, or occupation, unless such restraint is necessary for the common welfare. This law interferes with the free sale of food; for the condition is imposed that no one shall sell food, and at the same time, and as part of the transaction, give away any other thing. It is not material if, by reason of the prohibition, the owner's sales of food are greatly cut down, and his ability to support his family thereby, perhaps, largely decreased. If the law is valid, the fact of its existence is a complete answer to the complaints of the owner of food that his liberty to sell his property, and his chance to make a livelihood, are very greatly impaired. It cannot be truthfully maintained that this legislation does not seriously infringe upon the liberty of the owner or dealer in food products to pursue a lawful calling in a proper manner, or that it does not, to some extent at least, deprive a person of his property, by curtailing his power of sale; and unless this infringement and deprivation are reasonably necessary for the common welfare, or may be said to fairly tend in that direction or to that

result, the legislation is invalid as plainly violative of the constitutional provision under discussion.

"This brings us to the consideration of the question whether the act is valid as a proper exercise of what is, by way of classification, called the police power of the State. That power has never yet been fully described, nor its extent plainly limited, further, at least, than this: It is not above the constitution, but it is bounded by its provisions; and, if any liberty or franchise is expressly protected by any constitutional provision, it cannot be destroyed by any valid exercise, by the legislature or the executive, or the police power. The extent of this power has been the subject of discussion in this Court; and in the recent and most important case of In re Jacobs, 98 N. Y., 98, 107, the question was examined and most exhaustively reviewed by Earl, J., in his opinion. To reopen the subject now would be useless and I refer to that case as authority for the statement that the legislature cannot, w i t h o u t r e a s o n and arbitrarily, infringe upon the liberty or the property rights of any person within the protection of the Constitution of the State; and that, if the legislature shall determine what is a proper exercise of its police power, its decision is subject to the scrutiny of the Courts. The subject was again reviewed in People vs. Marx, 99 N. Y., 377; 2 N. E. Rep. 29, in an opinion written by Rapallo, J., and concurred in by the whole Court. In the Jacobs Case, supra, this Court held the tenement-house cigar act, so called, unconstitutional; and in the Marx Case, supra, the section of the act relating to the manufacture and sale of oleomargarine, which absolutely prohibited its manufacture and sale, was also held unconstitutional, inasmuch as it absolutely prohibited an important branch of industry, not injurious to the community, and not fraudulently conducted, solely for the reason that it competed with another branch. Under an exercise of the police power, the enactment must have reference to the comfort, the safety, or the welfare of society, and it must not be in conflict with the constitution. The law will not allow the rights of property to be invaded, under the guise of a police regulation for the protection of health, when it is manifest such

is not the object and purpose of the regulation. See Austin vs. Murray, 16 Pick. 121, 126; Com. vs. Alger, 7 Cush. 53, 84, cited with approval in Re Jacobs, supra. As is also said in the last case, it is generally for the legislature to determine what laws and regulations are needed to protect the public health and serve the public comfort and safety; and, if its measures are calculated, intended, convenient, or appropriate to accomplish such ends, the exercise of its discretion is not the subject of judicial review. But those measures must have some relation to these ends. Courts must be able to see, upon a perusal of the enactment, that there is some fair, just, and reasonable connection between it and the ends above mentioned. Unless such relation exists, the enactment cannot be upheld as an exercise of the police power."

People vs. Gillson, 109 N. Y., 389; 17 N. E., 343, 345 to 347.

Another leading case is that of Hewin, et al., vs. City of Atlanta, decided by the Supreme Court of Georgia in 1905, in which the questions are fully discussed, and many authorities are cited and in which it was held as follows:

"1. An agreement between a number of merchants and a corporation provided that the latter should print the names of the former in its subscribers' directory, and circulate a number of copies of the book in a named city, and that the merchants should purchase of the corporation a number of so-called trading stamps, to be delivered to customers with their purchases (and not to be otherwise disposed of), and by them preserved and pasted in the books furnished by the corporation until a certain number had been secured, when they should be presented to the corporation in exchange for the customer's choice of certain articles kept in stock by the corporation.

"HELD: (1) That the furnishing of the trading stamps by a merchant to his customers did not constitute a business separate and distinct from that of selling

merchandise, but was merely an instrumentality in or an incident to that business, being in its nature incapable of such separate existence as to constitute of itself a business in either a commercial or a legal sense. (2) That authority in a municipal charter 'to make just and proper classification of business for taxation,' and 'to classify business, and arrange the various businesses, trades and professions carried on in said city into such classes of subject for taxation as may be just and proper,' did not authorize the passage of an ordinance separating from the business of selling merchandise the incident of furnishing trading stamps for the purpose of increasing the sale of merchandise, and classifying the furnishing of such stamps as a separate business, subject to taxation. (3) That whether the furnishing of the trading stamps be treated as a gift, or as a part of the contract of sale of the merchandise, which is delivered at the time the stamps are furnished, the furnishing of the stamps does not constitute a business subject to be taxed under charter authority to classify and tax business. (4) That the word 'business,' in a commercial or legal sense, means something done or carried on for a livelihood, profit or the like. (5) That even if the General Assembly is authorized to impose a tax upon one who gives away his property, the giving away of property is not a business, within the meaning of a charter provision authorizing the taxation of business.

"(3) Persons against whom an unlawful exaction in the form of a tax is sought to be made may unite in an application for an injunction to restrain the collection of the tax, and are not compelled to pay the same, and brings separate suits against the tax officer for damages."

Hewin, et al., vs. City of Atlanta, 49 S. E., 765; 121 Ga., 731.

A leading case upon the subject, in which many of the authorities are cited, is the case of City Council of Montgomery vs. Kelly, decided by the Supreme Court of Alabama, in 1905 (38 So. Rep., 67-69; 142 Ala., 542), in which it was decided as follows, as shown by the headnote:

"A city ordinance requiring merchants giving trading stamps to pay a license fee of $100 in addition to that required of merchants engaged in the same business, but not giving trading stamps, is in contravention of Const. Section 1, providing that among the inalienable rights of citizens are life, liberty and the pursuit of happiness, and Section 35 declaring that the sole object of government is to protect the citizen in the enjoyment of life, liberty and property."

And the Court in the body of the opinion makes the following very clear and strong statement of the law, which fully establishes and specifically declares everything that we contend for in this case, and cites numerous cases in support thereof:

"The liberty which is so sedulously guarded by the Constitution of the United States and of this and other States comprehends more than the mere freedom from personal restraint. It included the right to pursue any useful and harmless occupation, and to conduct the business in the citizen's own way, without being discriminated against either by being prohibited from engaging in it or by being burdened with discriminative taxation. If it be allowed that an additional burden may be placed upon a merchant who chooses to advertise his business by offering a small gratuity to customers in the shape of these trading stamps, it would be equally lawful to place an extra burden on one who advertises his business in the papers, or one who offers, out of his own stock, a certain gratuity to every one purchasing goods to a certain amount, or one who erects a handsome sign in front of his store, etc. So long as his manner of conducting his business does not offend public morals, and work an injury to the public, it is his constitutional right to pursue, on terms equal to that allowed to others in like business, even though his methods may have a tendency to draw trade to him, to the detriment of competitors. Young vs. Commonwealth (Va.), 45 S. E., 327. State vs. Dalton, 22 R. I., 77; 46 Atl., 234; 48 L. R. A., 775; 84 Am. St. Rep., 818. People, ex rel., Madden vs. Dycker, 72 App. Div., 308; 76 N. Y. Supp., 111. People vs. Gillson,

109 N. Y., 389; 17 N. E., 343; 4 Am. St. Rep., 465. Long vs. State, 74 Md., 565; 22 Atl., 4; 12 L. R. A., 425; 28 Am. St. Rep., 268. Ex-Parte McKenna, 126 Cal., 429; 58 Pac., 916."

See City Council of Montgomery vs. Kelly, Sup. Court Ala., February 1st, 1905, 38 Sou. Rep., 67-69; 142 Ala., 542.

OTHER LEADING CASES HOLDING SUCH STATUTES UNCONSTITUTIONAL.

The following are some of the leading cases holding such statutes unconstitutional which are frequently cited:

Denver vs. Frueauff, 39 Colo., 20; 88 Pa., 389.
State vs. Dalton, 22 R. I., 77; 46 Atl., 238; 48 L. R. A., 775; 84 Am. St. Rep., 818.
State vs. Dodge, 76 Vt., 197; 57 Atl., 983.
State vs. Sperry & Hutchinson Co., 110 Minn., 378; 126 N. W., 120.
Young vs. Commonwealth, 101 Va., 853; 45 S. E., 327.
Winston vs. Beeson, 135 N. C., 271; 47 S. E., 457; 65 L. R. A., 167.
People vs. Zimmerman, 102 App. Div., 103; 92 N. Y. Supp., 497.
Ex-Parte McKenna, 126 Cal., 429; 58 Pa., 916.
State vs. Ramsayer, 73 N. H., 31; 58 Atl., 958.
State vs. Shugart, 138 Ala., 86; 35 So., 28; 100 Am. St. Rep., 17.
Long vs. Maryland, 74 Md., 565; 22 Atl., 4; 12 L. R. A., 425; 28 Am. St. Rep., 268.

CASES SUPPOSED TO SUSTAIN LEGISLATION AGAINST TRADING STAMPS, ETC.

So far as we are aware, there are but six cases holding legislation directed against the use of trading stamps to be constitutional in whole or in part, and three of these are cases

decided in the District of Columbia. These very few cases are opposed to the numerous and otherwise unanimous decisions of the Appellate Courts of many States. They are not only very few in number, but we submit will be found weak in reasoning. Even if those cases were correctly decided on the facts involved, they do not sustain the constitutionality of the Florida Statute, as we shall show more fully hereafter. Said cases supposed to sustain the validity of legislation against trading stamps are Lansburgh vs. District of Columbia, 11 Appellate D. C., 512. District of Columbia vs. Kraft, 35 App. D. C., 253; 30 L. R. A. (N. S.), 957. District of Columbia vs. Gregory, 35 App. D. C., 271. Humes vs. Fort Smith, 93 Fed., 857. State vs. Hawkins, 95 Md., 146; 51 Atl., 850. State of Washington vs. Pitney, 140 Pac., 918. Said last mentioned case is now before this Court on writ of error.

As above stated, these cases are opposed to the whole current of authority and as is said by the Supreme Court of California: "They are not of sufficient consequence to ruffle the great current of authority which runs the other way." Their correctness has been expressly denied by the Supreme Appellate Courts of many States. We quote below a few of such comments upon them made in leading cases in the Supreme Courts of different States.

The following is the statement concerning them made by the Supreme Court of California:

> "Respondent's counsel cite a few cases which, they contend, go directly to the subject of trading stamps, and support the validity of the act here in question, notably, State vs. Hawkins, 95 Md., 146; 93 Am. St. Rep., 328; 51 Atl., 850. Humes vs. Ft. Smith, 93 Fed., 857, and Lansburgh vs. District of Columbia, 11 App. D. C., 512. With respect to these cases, we do not deem it necessary to consider the suggestion of petitioners that they are distinguishable from the mass of cases above cited. Whatever they may hold, they are not of sufficient consequence to ruffle the great current of authority which runs the other way."

Ex-Parte Drexel, 147 California, 763; 82 Pac., 429; 2 L. R. A. (N. S.), 597.

The following is what the Supreme Court of Massachusetts says of said cases:

"The Court of Appeals of the District of Columbia, in its decisions in Lansburgh vs. District of Columbia, 11 App. D. C., 512, and in District of Columbia vs. Gregory, 35 App. D. C., 271, stands almost alone, although it has been followed by one or two Federal Judges, in reaching an opposite conclusion.

"The recent decision in Matter of Gregory, 219 U. S., 210; 31 Sup. Ct., 143; 55 L. Ed., —, has no bearing upon the question before us as the Judge who wrote the opinion was careful to put the decision upon grounds that have no relation to the validity of such provisions as those of this bill."

In re Opinion of the Justices, 207 Mass., 606; 94 N. E., 846, 849.

The Supreme Court of Colorado comments as follows upon said cases of Lansburgh vs. District of Columbia, 11 App. D. C., 512, and Humes vs. City of Ft. Smith, 93 Fed., 857:

"If the decision of that case is to be construed as announcing the doctrine that a legislative declaration that a business, lawful in itself, is a 'gift enterprise,' and is thereby rendered unlawful regardless of the fact that it wholly lacks the essential element of chance, it is at variance with the uniform current of authority, and if, as we understand it, the conclusion therein reached was because the scheme under consideration was, in the opinion of the Court, obnoxious to public morals or detrimental to the public welfare, we decline to follow it, because it is directly opposed to the conclusion reached as to its character in all the cases in which the business of the trading stamp company has been under investigation. Humes vs. City of Ft. Smith (C. C.), 93 Fed., 857, is similar to, and follows, the

Lansburgh case. We find no other case which, when carefully considered, supports the position assumed by plaintiff in error in this case."

City and County of Denver vs. Frueauff, 39 Colo., 20; 88 Pac., 389, 395.

These cases have been fully commented on and disapproved by the Supreme Court of Minnesota in the following case. State, ex rel., Simpson vs. Sperry and Hutchinson Company, 110 Minn., 378; 126 N. W., 120; 30 L. R. A. (N. S.), 966.

SAID DISTRICT OF COLUMBIA CASES AND OTHER CASES, EVEN IF CORRECTLY DECIDED, DO NOT SUSTAIN THE CONSTITUTIONALITY OF THE FLORIDA STATUTES.

Even if said cases cited as sustaining the constitutionality of such statutes were correctly decided, they do not sustain the constitutionality of the Florida Statute, but, on the contrary, the statements, arguments and admissions of the Courts in those cases show that even under such decisions and opinions the Florida Statute is unconstitutional.

Those cases only held that such statutes were constitutional where they applied to transactions wherein the trading stamps or the like were issued by and redeemable by a trading-stamp company, and where some element of chance was involved in determining what premium the purchaser would get. As we have shown, the Florida Statute attempts to impose these prohibitory so-called license taxes on transactions where the Florida merchant, himself, issues the coupon or profit-sharing certificate or the like and redeems it himself in a manner involving no element of chance or gambling, or where the manufacturer or shipper outside of Florida issues the coupon or profit-sharing certificate with his own goods and redeems it himself. As to these transactions, all the cases show that the statute is unconstitutional. The only other class of transactions covered by the provisions of the Florida Statute

in question is where the manufacturer or merchant outside of Florida puts a coupon or profit-sharing certificate in a package of his goods which he ships to Florida and such coupon or certificate is redeemable by some other party. But in that case the transaction, we submit, is clearly interstate commerce and the statute of Florida is unconstitutional in attempting to impose such burdens upon it or to so regulate it, as it does so attempt to do. Furthermore, if the act is unconstitutional as to the first two classes of cases, the provisions are so entire and inseparable that the whole is unconstitutional. We desire to make it clearly understood that we claim that all of the provisions are unconstitutional under the Fourteenth Amendment, as is shown by all the authorities except the very few cases above mentioned; but what we are arguing now is that **even if those few cases were correct, yet the Florida Statute is unconstitutional,** as above stated.

In the Lansburgh case the Court expressly limits its decision so as not to apply to our present case or the Florida Statute. The Court uses the following language:

> "We do not feel called upon at this time to undertake a specification of the particular conditions in which the act under consideration might or might not apply to actual merchants in the ordinary course and practice of competitive business, or to determine just what character of inducements by way of gift or premium may and may not be held out to purchasers at the time, and as a part of their purchases. That it was not intended to apply to ordinary discounts for cash or in proportion to amounts of purchases, when made by the merchant himself to his customers, may be regarded as certain, and the exercise of such power would doubtless be denied if expressly attempted. Nor can it with reason be said to apply to bona fide co-operative associations and the like. It is possible, also, that it might not be operative in a case where the sale of a lawful article is accompanied by a gift of something specific and certain not attended with any element of chance, and where the gift is not the real object of the sale, in an attempt to evade acts regulating or prohibiting a particular traffic, as, for

example, in the case of Lauer vs. District of Columbia, 11 App. D. C., 453."

Lansburgh vs. District of Columbia, 11 App. D. C., 512.

In the Kraft case the Court uses the following language:

"Assuming that the statute does not apply in the case of bona fide co-operative associations, or of merchants making discounts or presenting actual articles directly to their customers, we fail to see that the co-operative association belongs in either class."

District of Columbia vs. Kraft, 35 App. D. C., 253; 30 L. R. A. (N. S.), 957, 961.

It is to be noted that in the Kraft case the Court of Appeals of the District of Columbia expressly says that none of the cases cited to sustain the doctrine of the Lansburgh case do sustain it, excepting the case of Humes vs. Fort Smith, 93 Fed., 857, which is merely the decision of one of the inferior Federal Courts following the Lansburgh case. The following is the language of the Court upon the subject:

"Of the cases cited on behalf of the District of Columbia, but one directly upholds the doctrine of the Lansburgh case which is quoted from and approved. Humes vs. Ft. Smith, 93 Fed., 857. State vs. Hawkins, 95 Md., 133; 93 Am. St. Rep., 328; 51 Atl., 850, does not involve the direct question presented here."

District of Columbia vs. Kraft, 355 App. D. C., 253; 30 L. R. A. (N. S.), 957, 962.

In the Gregory case the Supreme Court of the United States in no way passed upon or indicated any opinion upon the correctness of the decision of the Court of the District of Columbia. All that the Supreme Court decided was that the Police Court had jurisdiction in the case, and that the Supreme Court would not consider any other question. This Court uses the following language therein:

"The only question before us is whether the Police Court had jurisdiction. A habeas corpus proceeding can not be made to perform the function of a writ of error, and we are not concerned with the question whether the information was sufficient, or whether the acts set forth in the agreed statement constituted a crime, that is to say, whether the Court properly applied the law, if it be found that the Court had jurisdiction to try the issues and to render the judgment."

In the matter of Gregory, 219 U. S., 210; 56 L. Ed., 184, 189.

In the case above mentioned of Humes vs. City of Fort Smith, Arkansas, the matter involved was a license tax imposed upon a trading stamp or premium concern which was engaged in the business of selling stamps to certain merchants only of the city to be given by them to their customers with purchases and which were redeemed by the seller. As is seen, this case has no application to merchants or manufacturers issuing, offering or giving coupons, profit-sharing certificates or the like with their own goods, redeemable by themselves.

Humes vs. the City of Fort Smith, Arkansas, 93 Fed., 857.

In the Maryland case of State vs. Hawkins it was held that the Maryland Statute in question in that case was valid to the extent that it prohibited transactions into which the element of gambling entered, but it expressly recognized the law as established in the case of Long vs. State, 74 Md., 565; 22 Atl., 4; 12 L. R. A., 425; 28 Am. St. Rep., 268, that a statute prohibiting all gifts to purchasers of goods, wares or merchandise as inducements to make the purchases was invalid and could not be enforced in so far as it related to gift enterprises not involving chance. As the Bill of Complaint in our case shows and alleges fully and clearly and states the facts showing that there is no element of gambling or chance in the uses of coupons, profit-sharing certificates or the like mentioned in said bill and involved in this case, the said Maryland case of State vs. Hawkins does not sustain the validity of the Florida Statute, but, on the contrary, shows that it is unconstitutional.

State vs. Hawkins, 95 Md., 133; 51 Atl., 850; 93 Am. St. Rep., 328.

The only case that we know of in which a license tax on the use of trading stamps imposed by a statute was held valid wherein the decision considered in some aspects may be broad enough to cover the Florida Statute so far as its violation of the Fourteenth Amendment to the Constitution of the United States is concerned, although not covering or sustaining its violation of the interstate commerce clause of the Constitution of the United States, is the case of State vs. Pitney now before this Court on writ of error to the Supreme Court of the State of Washington. When the language of the opinion in that case is considered, however, it will be perceived that practically the only reason or grounud given for possibly sustaining the statute as an exercise of the police power, is that someone might practically force the use of trading stamps upon the merchants. Of course this could have no application to the provisions of the Florida Statute imposing the prohibitory so-called license taxes upon the issuance and redemption of coupons, profit-sharing certificates, etc., by the merchant or the manufacturer, himself, who issues and redeems his own coupons and certificates. As to the suggestion of the Washington Court that the use of such stamps might encourage indiscriminate purchasing by the people, we submit that it is too trivial to be considered a possible basis of legitimate or lawful exercise of the police power by the State. The same reasoning would apply to any form of advertising that would induce people to buy goods or to any form of inducement or discount by a merchant to his customers, and the Legislature would be equally justified in prohibiting a merchant from advertising in the newspapers or prohibiting a merchant from announcing that he had reduced his goods from a dollar to ninety-eight cents, and thereby inducing the ladies to flock to his store and buy more than they really needed. No Court anywhere except said Supreme Court of the State of Washington has ever indicated that in this country any legislature possesses any such arbitrary or unlimited power of interfering with, restraining or prohibiting private business. If that be the law, then the protection given to the citizen by the Constitution of the United States and by

the Constitution of his State in his liberty and in his property, amounts to nothing at all, for there is no business and no transaction for the restraint or prohibition of which some possible reason as fanciful, imaginary and trivial could not be supplied.

State vs. Pitney, Sup. Court of Wash., May 16th, 1914; 140 Pac., 918, 920.

STATEMENT OF JUSTICE PECKHAM CONCERNING THIS ARGUMENT.

The language used by Mr. Justice Peckham in delivering the unanimous opinion of the Court of Appeals of New York is very applicable to the suggestion of the Supreme Court of Washington that possibly people might be induced to buy more than they need by such coupons or profit-sharing certificates and it is especially covered by the declaration of the law by Justice Peckham that: "The argument is directed to that class of sumptuary legislation which, while good enough in some phases, is, when carried to minute details, simply unauthorized and illegal."

The portion of the opinion of the New York Court of Appeals delivered by Justice Peckham, above referred to, is as follows:

> "I lay no stress whatever upon the argument that this kind of transaction naturally induces people to purchase more than they want of any article of food, in order to get the other article with it which comes to them in the shape of a gift, and the poorer people are led to extravagance in outlay. It may be remarked that in purchasing articles of food, even if one purchase more than is then absolutely necessary, the food need not be, and in all probability is not, wasted. But, aside from that, the argument is directed to that class of sumptuary legislation which, while good enough in some phases, is, when carried to minute details, simply unauthorized and illegal. The right to legislate upon the subject of intoxicating liquors is acknowledged by every one, and is founded upon the fact that their use in excessive quantities leads, in large masses of cases, to crimes, poverty, and enormous suffering, and bears most harmfully upon the sum of the happiness of the human race. So in regard to

lotteries in general. A wide-spread custom of indulging in the purchase of tickets leads, among the poorer classes certainly, and also among others, to habits of recklessness, waste, and idleness. It cultivates a gambling spirit, and tends to a hatred of honest labor, and to a desire to obtain riches or money without the necessary expenditure of industrious energy. Many other instances could be given where the interference of the legislature with the personal liberty of the citizen would be at once regarded as proper, or at least legal, under the exercise of the police power. But there is a limit to such interference, in my judgment, and there does come a time when the constitutional provision, so often herein quoted, steps in to protect the citizen. As an act in furtherance of the public health or morals, no one, at this period of the history of man, would, I think, regard it as legal to enact, in this State (changing the verbiage to suit the altered condition of the race in this country), that no man or woman under the rank specified in the law shall thereafter wear fur on his or her clothes, or that no knight under the degree of lord should wear shoes or boots having pikes in them more than two inches long. A British parliament enacted such measures, to prevent, as was alleged, undue expenditures, and for the preservation of the morals of the people. See 2 Edw., 111, c. 1 (A. D. 1337); 3 Edw., IV, c. 5 (A. D. 1463). Numberless statutes of a similar nature have been passed both in England and in this country and it is generally admitted that some of the best legislation of both countries has been found in the repeal of laws enacted by former parliaments and legislatures. It seems to me that to uphold the act in question upon the assumption that it tends to prevent people from buying more food than they may want, and hence tends to prevent wastefulness, or lack of proper thrift, among the poorer classes, is a radically vicious and erroneous assumption, and is to take a long step backwards, and to favor that class of paternal legislation which, when carried to this extent, interferes with the proper liberty of the citizen and violates the constitutional provision referred to."

People vs. Gillson, 109 N. Y., 389; 17 N. E., 348-349.

THE IMPOSITION OF SAID LICENSE TAXES IS IN NO WAY A LEGITIMATE EXERCISE OF ANY POLICE POWER OF SAID STATE.

It is expressly alleged in the Bill of Complaint, and all the facts therein alleged specifically show that there is no element of gambling or chance in the use of said coupons or certificates, and that there is nothing in connection therewith, or in the use of the same, that is prejudicial to public health and safety, morals or welfare.

Also, that by the use of the same, the merchants are enabled to give a discount to purchasers, or to give additional value to purchasers in the shape of premiums, or articles sold for or exchanged for such coupons, slips, certificates, or the like, and that the purchasers of such articles or merchandise are substantially benefited thereby. Also these allegations are admitted on the record in the present status of this case.

> Bill of Complaint, paragraphs VI and VII, and paragraph XIV, subdivision K, Printed Record pages 11, 18.

The above propositions have been sustained by almost innumerable decisions of the Federal Courts and by the highest courts of very many States. It is really included in the main proposition, that there is no just or reasonable ground of classification and imposing the license taxes complained of upon merchants who use such coupons or the like, and not upon other merchants in the same line of business who do not use such coupons or the like, but advertise their business, or offer other inducements to purchasers, in some other way. Many of the cases heretofore cited fully sustain these propositions, and specifically decide that such statutes can not be sustained under the police power. All the decisions and opinions of this Court, including the numerous recent decisions upon the subject, hold and declare the law to be that the exercise of police power by a State, where it is alleged to conflict with the Constitution of the United States, is subject to review by this Court and to the decision of this Court as to whether or not it is constitutional and that the decision as to whether or not it violates the Fourteenth Amendment to the Constitution of the United States will depend upon whether the matter in question appears to be

a proper subject for the exercise of the police power, and whether the legislation in question appears to have a basis of reason and not to be merely arbitrary. We submit that we have fully and clearly shown that in the present case there is no sufficient basis of reason for the legislation and that there is no valid classification, but that the same is arbitrary and unconstitutional.

"Definitions of the police power must, however, be taken subject to the condition that the State can not, in its exercise, for any purpose whatever, encroach upon the powers of the general government, or rights granted or secured by the supreme law of the land."

New Orleans Gas Light Company vs. Louisiana Light and Heat Producing and Manufacturing Company, 115 U. S., 650; 29 L. Ed., 516, 520.

"But the exercise of the police power is subject to judicial review, and property rights can not be wrongfully destroyed by arbitrary enactment."

Dobbins vs. City of Los Angeles, 195 U. S., 239; 49 L. Ed., 169, 176.

"But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this."

"Classification to relieve a law from the charge of a denial of equal protection can not be made arbitrarily, but must be based upon some difference which bears a just and proper relation to the attempted classification."

Gulf, Colorado & Santa Fe Railway Company vs. Ellis, 165 U. S., 150-159; 41 L. Ed., 666-669.

"But while recognizing to the full extent the impossibility of an imposition of duties and obligations mathematically equal upon all, and also recognizing the right of classification of industries and occupations, we must never-

theless always remember that the equal protection of the laws is guaranteed, and that such equal protection is denied when upon one of two parties engaged in the same kind of business and under the same conditions burdens are cast which are not cast upon the other."

Cotting, et al., vs. Godard, as Attorney General of the State of Kansas, 183 U. S., 79, 103, 104, 112; 46 L. Ed., 92, 106, 109, 110.

"The Fourteenth Amendment, in declaring that no State shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, undoubtedly intended, not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the Courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses."

Barbier vs. Connolly, 113 U. S., 27, 31; 28 L. Ed., 923, 924.

"The fact is that both corporations do the same business in character and kind, and under the statute in question a foreign corporation may be taxed many thousands of dollars for the privilege of doing, within the State, exactly the same business as the domestic corporation is permitted to do by a tax upon its privilege, amounting to only a few hundred

dollars. We hold, therefore, that to tax the foreign corporation for carrying on business under the circumstances shown, by a different and much more onerous rule than is used in taxing domestic corporations for the same privilege, is a denial of the equal protection of the laws, and the plaintiff being in position to invoke the protection of the Fourteenth Amendment that such attempted taxation under a statute of the State does violence to the Federal Constitution."

Southern Railway Co. vs. Greene, 216 U. S., 400, 412, 417, 418; 54 L. Ed., 536, 539, 541, 542.

THE DECISIONS OF THE SUPREME COURT OF FLORIDA ESTABLISH ALSO THAT THE COURTS ARE THE FINAL JUDGES OF THE VALIDITY OF SUCH LEGISLATION AND THAT SUCH PROVISIONS AS ARE CONTAINED IN THIS STATUTE ARE INVALID UNDER THE CONSTITUTION OF THE UNITED STATES AND OF THE STATE OF FLORIDA.

It may be noted also that the Supreme Court of Florida has declared and enforced the doctrine that the Courts are the final judges of what are the proper subjects for the exercise of the police power, and the constitutionality of such laws. And has also held that such classifications as we submit we have shown are involved in this case are in violation of the Constitution of the United States and the Constitution of the State of Florida.

"The Courts are the final judges as to what are proper subjects of the police power, and the law-making power can not arbitrarily make that a subject of its exercise which, from its nature, is not one."

City of Jacksonville vs. Ledwith, 26 Fla., 165.

"3. The legality of classifications adopted for legislative regulation may be determined with reference to the due

process of law provision of the State Constitution; but as such determination involves a Federal question the decisions of the Supreme Court of the United States control."

"4. Classifications adopted for legislative regulation should have some just relation to, or reasonable basis in, essential differences of conditions and circumstances with reference to the subject regulated, and should not be merely arbitrary; and all similarly situated or having similar legal duties and obligations in regard to the subject regulated, should be included in one class, at least where there are no practical differences that are sufficient to legally warrant a further or special classification in the interest of the general welfare."

Seaboard Air Line Railway vs. Abe. Simon & Co., 56 Fla., 545; Fla. Reports, 56, 1908.

COUNSEL FOR APPELLANTS IS ENTIRELY MISTAKEN AND THE STATEMENTS OF HIS BRIEF ARE DIRECTLY CONTRARY TO THE RECORD WHEREIN IT STATES THAT THE RETAIL MERCHANT IS NOT OPPOSING THIS STATUTE AND IS NOT MAKING THE FIGHT TO OVERTHROW IT AND ALSO THAT THERE MAY BE SOMETHING IN THE USE OF SUCH COUPONS, PROFIT-SHARING CERTIFICATES, ETC., INJURIOUS TO THE CONSUMER.

Counsel for Appellants says that "While not in the record in this case it is nevertheless true that the retail merchant is not opposing this statute and is not making the fight to overthrow it," etc.

See Brief of Appellant, pages 30, 31.

These assertions show the danger of attempting to state matters not in the record, for, in point of fact, it is not only not in the record, but it is positively opposed to the record and the statements are, in fact, erroneous. This Bill of Complaint was brought by merchants of various classes located and doing business in the State of Florida and the retail merchants are

fully represented in said Bill of Complaint and suit brought, in the parties to the suit and in opposing the statute. Of the six Complainants, two, the Harkisheimer Company of Jacksonville, Florida, and Joseph R. Mickler of Tampa, Florida, are exclusively engaged, respectively, in the business of a retail merchant doing a retail grocery business; two of said Complainants, namely, the J. S. Pinkussohn Cigar Company and the Forsyth Company, are retail, as well as wholesale, tobacco merchants.

See Bill of Complaint, paragraph 1, Printed Record pages 5 and 6.

In view of the statements of the brief for Appellants and their contradiction of the facts positively shown by the record we submit that it is not improper to say that some of the most strenuous opposition to said statute has come from retail merchants.

In fact the retail merchant is the merchant who is most adversely affected by the statute, because, as is shown by the Bill of Complaint and the authorities cited in our brief, and in fact as seems to be hardly disputed by counsel for Appellants, the business of the manufacturers shipping into the State, and the wholesale merchants is protected by the interstate commerce clause of the Constitution of the United States; and practically the only contention of counsel for Appellants seems to be that in the business wherein the Florida merchant, himself, issues and redeems or pays coupons, profit-sharing certificates, cash register slips and the like, the imposition of such license tax is within the power of the State, as it is intrastate commerce. It is manifest that the retailer is especially the man who would be hit and injured by this.

As to the other statements of the brief, as to the consumer making additional payments for the expenses of carrying on the coupon business, etc., there is not only no basis shown therefor and no answer or evidence in the record to base such assumptions on, but they are contrary to the express statements of the facts set out in the Bill of Complaint and admitted

for the purposes of this argument. The Bill of Complaint contains the following express statements and allegations among others:

> "That by the use of the system of delivering such coupons, slips, certificates or other tokens with merchandise sold, the merchant is enabled to give a discount to purchasers or to give an additional value to purchasers in the shape of the premiums or articles sold for or exchanged for such coupons, slips, certificates or other tokens, and the purchasers of such articles of merchandise are substantially benefited thereby."
>
> Bill of Complaint, paragraph VI, Printed Record page 11.

Furthermore in view of said statements of Appellants' brief we think it proper to add, what we do not think the Attorney General will deny, namely, that said license taxes complained of were enacted without any demand for same by the public, without any notice to the public, and that they have no support of public sentiment in Florida.

It is furthermore to be noted that all the cases and decisions, without exception, and including the District of Columbia cases, and all the cases cited by Appellants, excepting the case of State of Washington vs. Pitney, now before this Court on writ of error, hold or admit that a statute imposing such a license tax on account of the issuance and redemption of such coupons, profit-sharing certificates, etc., by the merchant himself, without the intervention of a trading-stamp or premium company, is unconstitutional and invalid. And it is to be especially noted in this connection that the only provision of the Florida Statute which, according to the allegations of bill concerns intrastate commerce, is the tax on a merchant issuing and redeeming his own coupons, profit-sharing certificates, etc., as to the unconstitutionality of which there does not appear to be any doubt at all, according to the decisions of the Courts. The Bill of Complaint shows this and we submit that the brief

of Appellants practically admits it. We have stated and reviewed these decisions elsewhere in this brief.

FREQUENCY OF ATTEMPTS AT SUCH LEGISLATION DOES NOT SUSTAIN ITS CONSTITUTIONALITY.

Counsel for Appellants argues that because it appears from the decided cases that there have been frequent attempts to enact legislation attempting to prohibit or to impose heavy license taxes on the use of trading stamps or the like, that that is evidence or ground for holding that the provisions of the Florida Statute complained of are a proper and constitutional exercise of the police power of the State. We submit that there is no basis for such an argument when it appears that in every case in the United States in which the question has arisen excepting, perhaps, the case of State of Washington vs. Pitney, now before this Court on writ of error, such legislation as is contained in the Florida Statute has been held to be unconstitutional. That there have been frequent attempts at such legislation only indicates that the use of such stamps, coupons, profit-sharing certificates and the like is a successful method of inducing and enlarging trade and business, and that the people like it and will patronize the merchants who use it, and that the influence of narrow and illiberal persons who do not wish to give premiums or discounts to customers has been able from time to time to get such statutes into and through some Legislatures. It is not difficult in a statute, like the Florida Statute, for instance, containing over fifty pages of provisions for license taxes, for a person who is unwilling to get or increase business by liberal and beneficial inducements, such as discounts, profit-sharing, premiums and the like, to get this kind of legislation either by political influence or by getting it slipped through in such an omnibus bill, without any public demand therefor and without any consideration of the public welfare, and against the wishes of the people, so as to use the legislative power to arbitrarily prevent legitimate and beneficial methods of doing business by competitors. The frequency of such occurrences only demonstrates the dangers of such legislation and the necessity of the Courts protecting the people and protecting individuals against such abuses of legislation

and in their constitutional rights. As we have said before, one of the greatest duties that now presses upon the Courts is the necessity of providing safeguards against such abuses of legislation whereby advantage is taken of the spirit of the times and the trend of legislation in extending the scope of police and governmental powers to abuse such powers by arbitrary and unconstitutional legislation, aimed to deprive certain persons or classes of persons of legitimate and lawful rights and to give undue and unjust advantages to others. This legislation is indeed truly and clearly characterized by Mr. Justice Peckham as follows:

> "It is evidently of that kind which has been so frequent of late—a kind which is meant to protect some class in the community against the fair, free, and full competition of some other class; the members of the former class thinking it impossible to hold their own against such competition, and therefore flying to the Legislature to secure some enactment which shall operate favorably to them, or unfavorably to their competitors, in the commercial, agricultural, manufacturing, or producing fields."
>
> People vs. Gillson, 109 N. Y., 389; 17 N. E., 343, 345 to 347.

SAID PROVISIONS OF SAID STATUTE OF FLORIDA ARE CONTRARY TO AND IN VIOLATION OF THE COMMERCE CLAUSE OF THE CONSTITUTION OF THE UNITED STATES.

The objections to said statute indicated in the above heading, namely, that it violates the commerce clause of the Constitution of the United States, is stated in the Bill of Complaint as follows:

> "(1) That said statute in the said enactments and provisions thereof undertakes and attempts to and if it be permitted to be enforced or given effect will regulate, hinder, restrain, prohibit and destroy interstate commerce between the several States of the United States, to-wit: between States of the United States other than the State

of Florida and the said State of Florida contrary to and in violation of the commerce clause of the Constitution of the United States, to-wit: the third clause of Section 8 of Article I of the Constitution of the United States of America."

Clause (1) of paragraph XIV of Bill of Complaint, Printed Record page 16.

The facts upon which this ground of objection is based are stated fully and in detail in paragraphs II, III, V, VI and XII of the Bill of Complaint, Printed Record pages 6-10, 11, 13-15.

As will be seen by the specific allegations of the Bill of Complaint, and especially those in the paragraphs last above cited, and particularly in paragraph III of the bill, the coupons, certificates or the like, are transmitted from the manufacturers or shipper from out of the State of Florida, to the ultimate purchaser of the package containing same in the State of Florida, through a merchant or a wholesale merchant and a retail merchant in the State of Florida, and when a certain number of such certificates, coupons or the like are accumulated by such ultimate purchaser in the State of Florida, he returns them to the manufacturer or shipper outside of Florida, and informs him what premium or article he desires to receive therefor, which article is sent by such manufacturer or shipper from outside of the State of Florida to such ultimate purchaser inside the State of Florida.

A part of the statement of the methods used in the premises, contained in paragraph III of the Bill of Complaint, is as follows:

"That the manner or method of disposing of and redeeming, taking up or paying such coupons, slips, certificates or other tokens is that the same are enclosed in packages or the wrappers thereof or a part of the wrappers thereof, such packages are put in boxes, cases or other receptacles or enclosures and shipped by the manufacturer or producer from his place of business out of the State of Florida, as aforesaid, to the merchant in the State of Florida, generally

to a wholesale merchant or jobber, and such boxes, cases or enclosures containing such packages with coupons, certificates or the like, as aforesaid are received by the wholesale merchant or jobber in Florida and sold to the retail merchant in said State. The retail merchant generally opens the said boxes, cases or enclosures containing such packages with coupons, certificates or the like, and sells them to his customers. The customer takes such coupons, certificates or the like out of such articles or packages, or from the wrappers thereof, and when he has accumulated a sufficient number of them to entitle him to receive a premium or article or payment therefor, according to some list, catalogue or rules, promulgated by the manufacturer or the producer making or shipping the articles from without the State of Florida, he sends such coupons, certificates or the like to such manufacturer, producer or original shipper of the article, out of the State of Florida, or, in some instances, to a company or agency in some State of the United States outside of the State of Florida, and such coupons, certificates or the like are redeemed or paid or the article which such purchaser has selected from such list, catalogue or the like is sent to him in consideration of and for such coupons, certificates or the like, or for the same and a postage stamp or stamps, or a small sum of money in addition thereto. In all such cases the coupons, slips, certificates or tokens are put in the articles or in the wrappers thereof, or a part of the wrappers thereof, by the manufacturer, producer or shipper in a State of the United States, outside of the State of Florida, and shipped into the State of Florida, to be delivered by the merchant in Florida selling the articles to the purchaser thereof, and entitling the purchaser thereof, upon a contract, agreement, or sale made to him by the manufacturer, shipper or producer outside of the State of Florida, that upon such purchaser buying such merchandise, made, shipped or sold by such manufacturer, shipper or producer, outside of the State of Florida, and shipped into Florida, as aforesaid that upon return by such purchaser of a certain number of such coupons, certificates or the like to such manufacturer, producer or shipper, in a State of the United States outside of the State of Florida, or upon the return of such coupons, certificates

or the like with the addition of a postage stamp or stamps or a small sum of money, that such manufacturer or producer will sell or exchange therefor some article of merchandise of value selected by such purchaser from a list or catalogue, as aforesaid, and will ship or send such article from such place outside of the State of Florida to such purchaser in the State of Florida."

Printed Record, 7-10.

We submit that it is clear that so far as the wholesale merchant in Florida is concerned, who received the original box or case and sells to the retailer the same box or case unbroken, that the transaction is interstate commerce and he is not subject to the Florida license tax law which requires him to pay license taxes for each other person, firm or corporation who may redeem any coupon, certificate, etc., offered with such merchandise bargained and sold, etc.

Furthermore, we submit, that when the decisions of the Supreme Court of the United States and other Federal Courts are examined and applied to the transaction, it is also clear that the offering or delivering to purchasers by the retailer, of such coupons, certificates or the like, with the articles of merchandise, is equally interstate commerce and not subject to the payment of said license taxes attempted to be imposed by the State of Florida.

The question involved is not whether the physical package of merchandise remains a part of interstate commerce in the hands of the retailer who opens the larger case and takes and sells therefrom the small packages contained therein, but whether the coupon or certificate or the like which the manufacturer or shipper has put in the package in New York, for instance, and sent to be delivered to the ultimate purchaser of the package in Florida and the transactions concerning the same are interstate commerce. Such shipper in New York sends out such coupon or wrapper in or on the package to advertise his interstate business, and to increase the popularity and sales of his goods, etc., and such manufacturer or shipper in New York merely transmits such coupons or wrappers through the wholesale and the retail merchants in Florida as his agencies or means of distributing or delivering the same to

the ultimate purchaser in Florida, and such manufacturer or shipper in New York thereby offering to such ultimate purchaser, and agreeing with him, that upon the return of a certain number of coupons, signatures or the like, or the return of the same with a postage stamp, or a small sum of money, to such manufacturer or shipper in New York, that he will sell or deliver to such ultimate purchaser, in consideration of the same, a certain article of value, in New York; the return of such coupons or the like being made from Florida to New York by the ultimate purchaser, and the premium or article acquired thereby being shipped from New York to the ultimate purchaser in Florida. **We submit that clearly this transaction and the coupons, is a distinct transaction from the mere sale of the merchandise in the package by the Florida merchant, and is in all stages interstate commerce.**

The Florida merchant has nothing to do with the coupon except to act as the medium or agency of delivery from the manufacturer or shipper in New York or elsewhere out of the State of Florida, to the purchaser in Florida. The manufacturer or shipper in New York sends or tenders and delivers through such medium or agency directly to the purchaser of the package in Florida, such coupon or the like, tendering and delivering to such ultimate purchaser the offer, agreement and obligation of such manufacturer or shipper in New York, that upon the return to such manufacturer or shipper in New York of a sufficient number of such coupons or of such coupons and a postage stamp or stamps, or a small sum of money, as above mentioned, that such manufacturer or shipper in New York will sell or deliver in exchange therefor to such ultimate purchaser in Florida, such article to be shipped from New York to Florida, as aforesaid. The Florida merchant makes no promise to the purchaser concerning the coupon, incurs no liability concerning it in its return course to New York, does not receive or deliver the premium or article sold or given in exchange therefor, and has nothing at all to do with it, it being transmitted in the package of merchandise from the manufacturer or shipper in New York to the ultimate purchaser in Florida, and sent back by such ultimate purchaser in Florida to such manufacturer or shipper in New York, who sends back to the ultimate purchaser in Florida the premium or article. Therefore, as stated, it is an instrumentality where-

by the manufacturer or shipper in New York advertises and offers inducements to increase the amount of the sales of his merchandise in interstate commerce, and, we submit that under the decisions of the Supreme Court of the United States, no license taxes can be collected from the Florida merchant because of the fact that such a coupon is contained in the package or in the wrapper thereof.

DECISIONS OF THE SUPREME COURT OF THE UNITED STATES ESTABLISH THAT ABOVE TRANSACTIONS AND SAID COUPONS, ETC., ARE INTERSTATE COMMERCE, NOT SUBJECT TO STATE TAXATION.

The decisions of the Supreme Court of the United States, we submit, clearly establish that the transactions above mentioned, and the coupons, certificates, slips, etc., used as above mentioned are interstate commerce and that said licenses concerning the same, or the offering of the same with goods or merchandise, are unconstitutional taxes on interstate commerce. The decisions of the Supreme Court of the United States to that effect are so very numerous, that we can not undertake to cite them all, nor does it appear to be necessary to attempt to do so. We will cite some of the leading cases wherein the decisions are particularly applicable to this case. Many other decisions of the Supreme Court are referred to by said Court in these cases cited.

In Champion vs. Ames it was held, that lottery tickets and lottery advertisements transmitted from one State to another, is interstate commerce, and comes under the commerce clause of the Constitution of the United States. This case is exceedingly analogous to the present case. In fact the present case is stronger, for the lottery tickets or advertising concerning the same, only dealt with a certificate or papers concerning a transaction that might result in the holder getting an article of value from another State or foreign country, but might not result in anything of the sort, whereas in our case, the coupons are not only elements of interstate commerce, but by acquiring

a fixed number of them the holder is certainly entitled to get a valuable article to be shipped to him in the course of interstate commerce.

Champion vs. Ames, 188 U. S., 321; 47 Law Ed., 492.

In the case of Dozier vs. State of Alabama where each portrait ordered was to be delivered in an appropriate frame which frame the purchaser had the option to accept or not as he might choose to do and the pictures and frames were shipped into the State of Alabama from another State and remained the property of the shipper until paid for and delivered, it was held that the transaction was interstate commerce on which the State of Alabama could not interpose a license tax. The language of this Court in that case is peculiarly applicable to this case. It is to be noted that in the Alabama case this Court expressly said that the sale took place wholly within the State of Alabama, if a sale was made, and yet that the offer of the frames sent with the portraits from another State and the final acceptance by the purchasers in Alabama and the delivery to them of the frames was interstate commerce, just as we submit in our case the placing by a manufacturer in New York of a coupon in a package of merchandise to be delivered to the final purchaser and consumer in Florida, offering to that person that if he will buy a certain number of packages of said manufacturer's goods and take the coupons out of the same and return them to the manufacturer in New York, that said manufacturer will ship from New York to such ultimate purchaser or consumer a certain premium which the purchaser shall have the right to select from a catalogue furnished by the manufacturer is equally interstate commerce and the section of said statute attempting to impose a license tax thereon is in violation of the commerce clause of the Constitution of the United States and is invalid.

Dozier vs. State of Alabama, 218 U. S., 124, 127, 128.

These principles have been reiterated and enforced by this Court in still more recent cases.

Crenshaw vs. State of Arkansas, 227 U. S., 389; 57 L. Ed., 565.

Stewart vs. State of Michigan, 232 U. S., 665; 58 L. Ed., 786.

In Caldwell vs. North Carolina, the Supreme Court of the United States held that an ordinance under which a license tax might be required from an agent of a non-resident portrait company, was unconstitutional, being in violation of the commerce clause of the Constitution of the United States. In that case, the agent was in Greensboro, North Carolina. The portraits were shipped to him there from Chicago, by the Chicago Portrait Company, the pictures and the frames being packed in bulk in large cases, or packages, and the agent broke open these large original packages in Greensboro, took out the pictures and the frames, put each picture in a frame, and then delivered each picture to a person in North Carolina who had sent an order for a picture to the company in Chicago.

We submit that in principle this was precisely such a cause as ours. In the course of the opinion, the Supreme Court says:

"But it certainly can not be pretended that, if the pictures and the disconnected frames had been directly shipped to the purchasers, the license tax could have been imposed, either on the vendor out of the State, or on the purchaser within the State. If the pictures and the frames intended for them had been shipped directly to the purchasers, whether in the same or separate packages, such a transaction would, beyond question, be interstate commerce beyond the reach of the taxing power of the State.

"Nor does the fact that these articles were not shipped separately, and directly to each individual purchaser, but were sent to an agent of the vendor at Greensboro, who delivered them to the purchasers, deprive the transaction of its character of interstate commerce. It was only that the vendor used two instead of one agency in the delivery. It would seem evident that, if the vendor had sent the articles by an express company, which should collect on delivery, such a mode of delivery would not have subjected the transaction to State taxation. The same could be said if the vendor himself, or by a personal agent, had carried

and delivered the goods to the purchaser. That the articles were sent as freight by freight and were received at the railroad station by an agent who delivered them to the respective purchasers, in nowise changes the character of the commerce as interstate.

"Transactions between manufacturing companies in one State, through agents, with citizens of another, constitute a large part of interstate commerce; and for us to hold, with the Court below, that the same articles, if sent by rail directly to the purchaser, are free from State taxation, but, if sent to an agent to deliver, are taxable, through a license tax upon the agent, would evidently take a considerable portion of such traffic out of the salutary protection of the interstate commerce clause of the Constitution.

"It can not escape observation that efforts to control commerce of this kind, in the interest of the States where the purchasers reside, have been frequently made in the form of statutes and municipal ordinances, but that such efforts have been heretofore rendered fruitless by the supervising action of this Court. The cases hereinbefore cited disclose the truth of this observation."

Caldwell vs. North Carolina, 187 U. S., 622, 631, 632, 633; 47 L. Ed., 336, 341.

In the case of Lyng vs. Michigan, the Supreme Court uses the following language:

"We have repeatedly held that no State has the right to lay a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on, for the reason that such taxation is a burden on that commerce, and amounts to a regulation of it, which belongs solely to Congress."

Lyng vs. Michigan, 135 U. S., 161; 34 L. Ed., 150; 3 Inters. Com. Rep., 143; 10 Sup. Ct. Rep., 725.

In Crutcher vs. Kentucky the Supreme Court stated clearly also the principle entirely applicable in our case, that a State statute requiring a license that would affect interstate commerce, could not be sustained upon the contention that it was a police regulation. The Court says:

> "The character of police regulation, claimed for the requirements of the statute in question, is certainly not such as to give them a controlling force over the regulations of interstate commerce which may have been expressly or impliedly adopted by Congress, or such as to exempt them from nullity when repugnant to the exclusive power given to Congress in relation to that commerce. This is abundantly shown by the decisions to which we have already referred, which are clear to the effect that neither licenses nor indirect taxation of any kind, nor any system of State regulation, can be imposed upon interstate, any more than upon foreign, commerce; and that all acts of legislation producing that result are, to that extent, unconstitutional and void."
>
> Crutcher vs. Kentucky, 141 U. S., 47; 35 L. Ed., 649; 11 Sup. Ct. Rep., 851.

It has been held by the Supreme Court of the United States in innumerable cases, including the case above cited, and the cases cited by them, and from the original case of Brown vs. Maryland, decided by Chief Justice Marshall, down to the present time, that an occupation tax or other tax, imposed because of any transaction, or the selling of anything, or the doing of anything, which is interstate commerce, is a tax on interstate commerce, and in violation of the Constitution of the United States, and it is immaterial who is required under the statute to pay the tax.

Brown vs. Maryland, 12 Wheat., 444.

In the case of Champion vs. Ames, heretofore cited, wherein the Supreme Court held that lottery tickets and the advertisements of lotteries were interstate commerce, coming under the commerce clause of the Constitution, the opinion of the Court is so illuminating and so applicable to this case,

and there is such a full citation therein of other decisions of the Supreme Court of the United States upon the subject, that we do not think that we can present the matters in this brief as well in any way as by incorporating some quotations from that opinion. The Supreme Court cites the following cases and uses the following language:

"In Western U. Teleg. Co. vs. Pendelton, 122 U. S., 347, 356; 30 L. Ed., 1187, 1188; 1 Inters. Com. Rep., 306; 7 Sup. Ct. Rep., 1126, the Court recognized the commerce with foreign countries and among the States which Congress could regulate as including not only the exchange and transportation of commodities, or visible, tangible things, but the carriage of persons, and the transmission by telegraph of ideas, wishes, orders, and intelligence. See also Ratterman vs. Western U. Teleg. Co. 127 U. S., 411; 32 L. Ed., 229; 2 Inters. Com. Rep., 59; 8 Sup. Ct. Rep., 1127, and Leloup vs. Port of Mobile, 127 U. S., 640; 32 L. Ed., 311; 2 Inters. Com. Rep., 134; 8 Sup. Ct. Rep., 1380.

"It was said in argument that lottery tickets are not of any real or substantial value in themselves, and therefore are not subjects of commerce. If that were conceded to be the only legal test of what are to be deemed subjects of the commerce that may be regulated by Congress, we can not accept as accurate the broad statement that such tickets are of no value. Upon their face they showed that the lottery company offered a large capital prize, to be paid to the holder of the ticket winning the prize at the drawing advertised to be held at Asuncion, Paraguay. Money was placed on deposit in different banks in the United States to be applied by the agents representing the lottery company to the prompt payment of prizes. These tickets were the subject of traffic; they could have been sold, and the holder was assured that the company would pay to him the amount of the prize drawn. That the holder might not have not been able to enforce his claim in the Courts of any country making the drawing of lotteries illegal, and forbidding the circulation of lottery tickets, did not change the fact that the tickets issued by the foreign company represented so much money payable to the person holding them and who might draw the prizes

affixed to them. Even if a holder did not draw a prize, the tickets, before drawing, had a money value in the market among those who chose to sell or buy lottery tickets. In short, a lottery ticket is a subject of traffic, and is so designated in the Act of 1895. 28 Stat. at L., 963, U. S. Comp. Stat., 1901, p. 3178. The fact is not without significance in view of what this Court has said. That act, counsel for the accused well remarks, was intended to supplement the provisions of prior acts, excluding lottery tickets from the mails, and prohibiting the importation of lottery matter from abroad, and to prohibit the act of causing lottery tickets to be carried and lottery tickets and lottery advertisements to be transferred from one State to another by any means or method."

Champion vs. Ames, 188 U. S., 321, 351, 352, 353, 354; 47 L. Ed., 492, 499, 500.

THE PROVISIONS OF SAID STATUTE IMPOSING THE LICENSE TAXES WHICH COVER INTERSTATE COMMERCE BEING VOID, ALL SAID COUPON LICENSE TAX PROVISIONS ARE VOID.

We think it so clear that all of said coupon license tax provisions are in violation of the Fourteenth Amendment of the Constitution of the United States, including those that apply to commerce within the State as well as those that apply to interstate commerce, that we have really felt that it was unnecessary to state the objections or to discuss the points beyond the ground that the classification attempted was arbitrary and illegal, and that all said coupon license taxes were void as violating said Fourteenth Amendment, but we think also that it is clear that as to all said coupon goods shipped into Florida from other States, that it is void as violating the commerce clause of the Constitution of the United States. And futhermore, we submit, that if it is unconstitutional in that respect, all the provisions are unconstitutional because they are so closely connected, and because it is apparent that the Legislature of Florida undertook to impose these coupon license taxes as a whole and as one entire scheme, and they are too closely connected to be separable, and that it can not be

presumed that they would have enacted such provisions to apply only to commerce within the State or to coupons issued by and redeemed by merchants within the State and not to apply to coupons or like tokens issued or inserted by and redeemed by persons without the State. That the Florida Legislature would not impose a tax which in effect would discriminate against the Florida merchants, not being applicable to or enforceable against such persons or merchants outside of Florida. Both the Supreme Court of Florida and the Supreme Court of the United States have held that under such circumstances the invalidity of one portion of the provisions of the statute will invalidate the whole.

"2. The settled rule of statutory construction is that if the obnoxious section or part is of such import that the other sections or parts without it would cause results not contemplated or desired by the Legislature, then the entire statute must be held inoperative."

State vs. Patterson, 50 Fla., 128, Head Note 2.
Connolly vs. Union Sewer Pipe Co., 184 U. S., 540, 565; 46 L. Ed., 679, 692.
Leloup vs. Port of Mobile, 127 U. S. 640; 32 L. Ed., 311.
Harrison vs. St. Louis & S. F. R. Co., 232 U. S., 318.

"The rule as to statutes is that part of an act may be unconstitutional without invalidating the whole of it. If all the provisions are connected in subject matter depending upon each other, operating together for the same purpose, or otherwise so connected together in meaning that it can not be presumed that the Legislature would have passed the one without the other, the whole act will be declared void."

City of Jacksonville vs. Ledwith, 26 Fla., 212.

SAID SECTION OF SAID STATUTE REQUIRES EACH OF COMPLAINANTS AND EVERY PERSON SIMILARLY SITUATED TO PAY THE LICENSE TAXES OF OTHER PERSONS, FIRMS OR CORPORATIONS.

One of the objections to said section of said statute, and one of the grounds of unconstitutionality, which is indicated by the above heading, is specified in sub-division (D), of the Bill of Complaint. Printed Record page 17. One of the provisions of said section of said statute is as follows:

> "And no person, firm or corporation shall offer with merchandise, bargained or sold as aforesaid, any coupon, profit-sharing certificate or other evidence of indebtedness or liability, redeemable by any other person, firm or corporation than the one offering the same without paying the above license for each other person, firm or corporation who may redeem the same."

We submit that this clearly is an attempt to make one man pay the debt or license or tax of another, and to take or seize the property of one man, or to fine and imprison him, in order to compel him to pay a license or tax for some one else. This is so clearly in violation of the Fourteenth Amendment of the Constitution of the United States that we submit that the proposition requires no extended argument or numerous citation of authorities.

> "The equal protection of the laws which, by the Fourteenth Amendment, no State can deny to the individual, forbids legislation, in whatever form it may be enacted, by which the property of one individual is without compensation wrested from him for the benefit of another, or of the public."
>
> Reagan vs. Farmers Loan & Trust Company, 154 U. S., 399; 38 L. Ed., 1024.

One man can not be required to pay taxes for another,

nor can his property be levied on or sold to enforce collection of taxes for another.

Brown vs. Snell, 6 Fla., 741, 745-6.

SAID STATUTE ATTEMPTS TO DEPRIVE COMPLAINANTS, AND ALL OTHER PERSONS IN LIKE SITUATION, OF THE RIGHT TO BESTOW A GIFT OR GIVE A PREMIUM OR SHARE OF PROFITS OF BUSINESS, IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Subdivision (E) of objection to said statute, and grounds of unconstitutionality is as follows:

> "That said statute by its said provisions and said license taxes hereinbefore complained of, deprives Complainants and each of them, and every other person, firm or corporation in like situation, of their privileges, immunities and liberty and property, without due process of law, inasmuch as they or any of them can not bestow a gift or give a premium, or a share of the profits of the business of each or any of them, by reason of the said provisions of the said statute, hereinbefore set forth, without paying said enormous, excessive and prohibitory license tax, whereby they are hindered, restrained and prevented from so doing, exercising, having and enjoying privileges, immunities, liberty and property, guaranteed and secured to them and each of them by said Article XIV of the Constitution of the United States of America."
>
> Bill of Complaint, Printed Record page 17.

We submit that this objection is well taken and supported by a multitude of authorities, many of which have been already cited.

BY SAID PROVISIONS OF SAID STATUTE FINES SO GREAT AND IMPRISONMENT SO SEVERE ARE FIXED FOR NONPAYMENT OF SAID LICENSE

TAXES AS TO INTIMIDATE COMPLAINANTS FROM CONTINUING TO DO BUSINESS AND TESTING THE VALIDITY OF SAID STATUTE IN A COURT OF LAW AND THEREFORE SAID PROVISIONS OF SAID STATUTE ARE UNCONSTITUIONAL.

An additional and distinct ground of unconstitutionality of said provisions of said section of said statute concerning such license taxes is indicated in the foregoing heading. Legislation imposing burdens upon the business of a person or corporation and fixing such heavy penalties for disobedience by fines and imprisonment as to intimidate such person or corporation from continuing to do such business in such manner and resorting to the Courts to test the validity of such impositions or provisions are unconstitutional upon that distinct ground apart from the other grounds of unconstitutionality. The propositions are stated in the Bill of Complaint in subdivisions (L) and (M) as follows:

> "(L) That the penalties, fines and imprisonment provided in said section of said statute for the enforcement thereof, are so onerous, drastic and excessive and numerous, as to deter complainants from going on doing business in the premises as they have heretofore done, with reference to such coupons, slips, certificates, evidences of indebtedness and tokens as aforesaid, and testing the validity of said statute and the provisions thereof in a Court of Law.
>
> "(M) That the fines and penalties imposed by said provisions of said statute complained of, for the violation thereof, are so excessive and exorbitant as to be confiscatory of the property of said Complainants and each of them, were they or either of them to continue to carry on their businesses and to offer, sell or dispose of goods of merchandise with coupons, slips, certificates, evidences of indebtedness and such tokens, as aforesaid, for the purpose of testing the validity of the same in a Court of Law and should said law be held to be valid."
>
> Bill of Complaint, Record pages 18-19.

As has been shown in the Bill of Complaint each of these Complainants offer with merchandise which they sell, or deliver with the same, such coupons, certificates or the like redeemable by many other persons or corporations and divers of them offer or deliver coupons or certificates issued by and redeemable by themselves. The aggregate fines and imprisonments under these circumstances would be enormous and beyond all bounds of reason, aggregating many thousands of dollars of fines and many years of imprisonment. See II, III, IV, V and XII of the Bill of Complaint. Printed Record pages 6-10, 13-15.

That the provision for imposing such heavy and intimidating fines or imprisonment in such a case as this is in itself a distinct and sufficient ground of unconstitutionality as violating the Fourteenth Amendment to the Constitution of the United States has been fully decided by the Supreme Court of the United States.

Ex-Parte Young, 209 U. S., 123, 148; 52 L. Ed., 714, 724.

> "The provision of such statutes subjecting any gas company furnishing or selling gas in the city of New York to a penalty of $1,000 for every violation of their provisions respecting equipment, pressure, or rates of charge therein fixed is extravagant and unreasonable in its severity, and renders such statutes unconstitutional and void as a denial to such companies of the equal protection of the laws."
>
> Consolidated Gas Company vs. City of New York, 157 Fed., 851.

UNJUST AND ARBITRARY DISCRIMINATION WITHOUT ANY BASIS OF REASON AND DENIAL TO COMPLAINANTS OF EQUAL PROTECTION OF THE LAWS CONTRARY TO THE FOURTEENTH AMENDMENT IS FURTHER SHOWN BY GROSSLY DISCRIMINATING PENALTIES.

The purposes of the section of the statute complained of and the lack of any reason for its classification and discrimination and also the intent to discriminate against these Complainants and those in like situation and to deprive them of

the equal protection of the laws is made still further manifest by the fact that while the penalties imposed by said statute generally is only a fine of not more than double the amount of the required license, that under said section thirty-five the penalties provided are fine not exceeding one thousand dollars or imprisonment in the county jail not exceeding six months; there being no provision or punishment by imprisonment provided for the non-payment of license taxes generally. See copy of said section thirty-five hereinbefore printed and Record 40-41. Also sub-division (N) of Bill of Complaint. Record, page 18.

> "(N) That by said statute and in Section 59 thereof, it is provided and enacted as to persons, firms or corporations generally that shall carry on or conduct any business or profession for which a license is required, without first obtaining such license, that such person, firm or corporation shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than double the amount required for said license, but in said Section 35 it is provided and enacted that for failure to pay any of the license taxes hereinbefore mentioned and complained of, any person, whether acting for himself or as the agent for another, may be imprisoned in the county jail, not exceeding six months."

SAID PROVISIONS OF SAID STATUTE AMOUNT TO CONFISCATION OF THE GOODS COMPLAINANTS HAVE ON HAND WITH INSERTS OF COUPONS, CERTFICATES OR THE LIKE.

It is shown by the Bill of Complaint, that prior to and at the time of the enactment of said statute, Complainants had on hand in their stocks of merchandise, large quantities of such goods and articles which are sold and delivered with said coupons, etc., and that the same was true at the time said statute took effect, and is so at the present time, and if Complainants shall be prevented from selling such articles of merchandise with such coupons, etc., they will be subjected to great loss and damage, and much hindered, embarrassed and injured in their business, and the value of their said property

on hand as aforesaid will be destroyed or greatly lessened. See printed Bill of Complaint, paragraph 5, page 18.

For this reason also, said provisions of said act are unconstitutional. The proposition, we submit, is sustained by many of the cases heretofore cited.

People vs. Van DeCarr, New York Court of Appeals, 1904, 70 N. E., 965.

People vs. Zimmerman, 92 N. Y. Sup., 503.

SAID LICENSE TAXES UPON THE FACE THEREOF ARE SO EXORBITANT, ONEROUS AND UNREASONABLE, AS TO BE MANIFESTLY PROHIBITORY AND VOID.

The objection mentioned in the above heading is more particularly set forth in subdivisions (G), (H) and (I) of paragraph XIV, pages 28 and 29 of the printed bill, and we submit it sustained by the authorities.

Postal Teleg.-Cable Co. vs. Taylor, 192 U. S., 64; 48 L. Ed., 342.

Humes vs. Little Rock, 138 Fed., 929.

Ex-Parte Hutchinson, 137 Fed., 949.

Ex-Parte Hutchinson, 137 Fed., 950.

SAID PROVISIONS OF SAID STATUTE ARE CONTRARY TO THE PROVISIONS OF THE CONSTITUTION OF THE UNITED STATES AGAINST IMPAIRING THE OBLIGATION OF CONTRACTS.

The Bill of Complaint alleges and shows that in addition to dealing in coupon or insert goods which are shipped into Florida by persons from without the State of Florida, that divers of Complainants and other persons in like situation have delivered to their customers coupons, certificates, cash register slips or the like redeemable by such Florida merchants, issuing and delivering same upon the understanding that such Complainants should continue to sell to such customers such articles and deliver therewith such coupons, slips or the like so that such customers should be able to accumulate sufficient

numbers thereof so as to have the same paid or redeemed, as in the bill mentioned.

See paragraphs IV, V, VIII and IX of the Bill of Complaint, Record 10, 11, 12.

Said provisions of said statute complained of prevent Complainants and other persons in like situation from completing and performing said arrangement and understanding with their said customers, as is more fully stated in paragraph VIII of said Bill of Complaint. Complainants submit, therefore, that said provisions of said statute are unconstitutional, being contrary to and in violation of the provisions of clause one (1) of Section ten (10) of Article one (1) of the Constitution of the United States, as stated in paragraph XV of the Bill of Complaint.

Humes vs. City of Little Rock, 138 Fed., 929.
Ex-Parte Drexel, 147 California, 763.
Collins vs. New Hampshire, 171 U. S., 30, 33.

IN ITS VIRTUAL PROHIBITION OF TOBACCO INSERT COUPONS, CERTIFICATES OR THE LIKE THE FLORIDA STATUTE IS CONTRARY TO THE STATUTES OF THE UNITED STATES WHICH AUTHORIZE SUCH INSERTIONS.

See paragraph XVI of the Bill of Complaint.

"United States Revised Statutes, Sec. 3394, as amended by Section 10 of Act of July 24th, 1897, as further amended by Section 2 of Act of July 1st, 1902."
McDermott vs. Wisconsin, 228 U. S., 115.
Bettman vs. Warwick, 108 Fed., 50.
McCulloch vs. Maryland, 4 Wheat., 436.

Appellees respectfully submit that for all the reasons and upon all the ground hereinbefore stated and those set up in the Bill of Complaint, that there was no error in the proceed-

ings and the orders of the Court below and that the same should be affirmed.

CHARLES M. COOPER,
Counselor and Solicitor for Appellees.

RAST, TAX COLLECTOR FOR DUVAL COUNTY, FLORIDA, *v.* VAN DEMAN & LEWIS COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

No. 41. Argued October 29, November 1, 2, 1915.—Decided March 6, 1916.

In a suit brought to restrain the enforcement of the statute of Florida of 1913, imposing special license taxes on merchants using profit sharing coupons and trading stamps on the ground that it violates the contract and the commerce clauses of, and the due process and equal protection provisions of the Fourteenth Amendment to, the Federal Constitution, and in which the District Court, under Judicial Code, § 226, granted a preliminary injunction holding that the statute violated the Fourteenth Amendment without stating on which provision it rested its decision or determining whether the statute violated other provisions of the Constitution, this court, on appeal from the order of injunction reversed and remanded with instructions to dismiss the bill as the statute does not offend any constitutional provisions under consideration, and *held* that:

As the bill shows that the conditions of complainant's business and property engaged therein are such that enforcement of the statute would produce irreparable injury it furnishes ground for equitable relief.

On this appeal this court can pass on the constitutionality of the statute on all of the grounds submitted for consideration.

A classification based on differences between a business using, and one not using, such coupons and stamps is not so arbitrary as to deny equal protection of the law.

A distinction in legislation does not deny equal protection of the laws if any state of facts can be conceived that will sustain it; and, even though such facts or their effect may be disputed, courts cannot arbitrate such differences of opinion.

It is for the legislature to discern and correct evils, not only of definite injury, but also such as are obstacles to greater public welfare if within legislative authority, as is the use of such coupons and stamps.

Quære, whether a statute relating to coupons and stamps re-

deemable exclusively in cash and credit on purchase is objectionable, the statute and all the schemes under consideration in this case involving other methods of redemption.

The use of such coupons and stamps in connection with retail sales to individual purchasers and consumers and not designed to be used by the manufacturer from another State to the State of distribution, are not transactions of interstate commerce, and regulations of the use of such coupons and sales otherwise legal do not interfere with, nor are they a burden, on interstate commerce.

Regulation by a State of the use of such coupons and stamps in connection with sales of tobacco is not prohibited by Rev. Stat., § 3394, as amended in 1897 and 1902; that section does not attempt to protect and enforce permission as to retail sales within the States.

Regulation of retail sales within the State does not in this case amount to an attempt to control transportation of the packages into the State from other States.

The statute is not unconstitutional as impairing obligation of contracts as it must be construed as having prospective operation, and as not affecting sales completed before its enactment.

If a business is subject to regulation by the State and the imposition of privilege taxes for carrying it on, contracts made in its conduct are also subject to such regulation.

There are many restrictions upon liberty of contract and business that do not amount to deprivation of liberty and property without due process of law.

In conducting retail business the use of such coupons and stamps is not advertising pure and simple. The latter is merely identification and description of the article sold, apprising of quality and space, while the former relies upon something other than the article itself.

Whether the use of such coupons and stamps can or cannot be called a lottery, it is still within the power of the legislature to consider it as having similar evils; and the regulation thereof by the legislature is not to be impeached and overruled by the courts on account of difference of opinion in regard to the conclusion reached.

The recognized rule that legislative opinion may not impose judicial opinion as to what are fundamental rights, does not determine supremacy in any given instance; but the power of the legislature to regulate conduct and contracts upon its conception of the public welfare is only subject to review by the courts when the legislation is unreasonable or purely arbitrary.

Even if the taxes imposed by the statute are prohibitory, the

right to carry on business by using such coupons and stamps is not so protected by the Federal Constitution as to render such a tax a violation of the due process provision of the Fourteenth Amendment.

The statute is not open to objection as depriving of liberty and property without due process of law on account of severity of its penalties intimidating against testing its legality. *Ex parte Young*, 209 U. S. 123, distinguished.

214 Fed. Rep. 847, reversed.

A STATUTE of Florida approved June 5, 1913 (Vol. 1, p. 3), imposing licenses and other taxes, provides that merchants, druggists and storekeepers shall pay a license tax upon the cash value of the "stock of merchandise" of $3 for the first $1000 or fraction thereof, and $1.50 for each additional $1000 or fraction thereof. The tax upon wholesale dealers is $1.50 upon each $1000. The statute has this proviso: § 35, p. 35.

"Provided, further, That each and every person, firm or corporation, who shall offer with merchandise bargained or sold in the course of trade any coupon, profit-sharing certificate, or other evidence of indebtedness or liability, redeemable in premiums, shall pay annually a State license tax of Five Hundred ($500.00) dollars and a County license tax of two hundred and fifty ($250.00) dollars in each and every county in which said business is conducted or carried on, and if more than one place of such business shall be operated by any person, firm or corporation, a separate State and County license shall be taken out for each such place; and no person, firm or corporation shall offer with merchandise, bargained or sold as aforesaid, any coupon, profit-sharing certificate or other evidence of indebtedness or liability, redeemable by any other person, firm or corporation than the one offering the same without paying the above license for each other person, firm or corporation who may redeem the same. The license prescribed in this section shall be in addition to other licenses prescribed by this Act. Any

person violating any of the provisions of this section, whether acting for himself or as the agent of another, shall on conviction thereof be punished by fine not exceeding one thousand ($1000) dollars or by imprisonment in the county jail not exceeding six months.

"Mercantile Agencies: Shall pay a license tax of one hundred ($100.00) dollars in each county in which an office is established.

"Merchants using trading stamps, shall pay a license tax of two hundred and fifty ($250.00) dollars for each place of business where they use such stamps.

"Merchant tailors shall pay a license tax of ten ($10.00) dollars for each place of business."

This suit was instituted by appellees (Florida merchants) against appellant Rast as tax collector of Duval County, Florida, and the tax collectors of each county in the State, the different State's attorneys, county solicitors and prosecuting attorneys of the circuits and counties of Florida. The purpose of the suit was to restrain those officers from proceeding under the statute or enforcing it. A preliminary and perpetual injunction was prayed and that the act be declared unconstitutional, illegal and void.

The bill is very elaborate and we select from its repetitions and condense the following: It alleges the various businesses in which the complainants are engaged. The Van Deman & Lewis Company is a Florida corporation and a wholesale grocer, doing business as such and selling groceries in certain counties in the State; Harkisheimer Company is also a Florida corporation and is a retail grocer; J. S. Pinkussohn Cigar Company is a corporation organized under the laws of South Carolina and is a wholesale and retail merchant buying and selling cigars and other tobacco products in the cities of Jacksonville and Pensacola, Florida. With these complainants were joined others, corporations and individuals, doing business in Florida.

It is alleged that complainants and each of them in the conduct of their business offer for sale and deal in various and numerous articles of merchandise manufactured and produced in other States than Florida by persons and corporations in those States and shipped into Florida to be sold therein, and who, for the purpose of advertising their businesses and increasing their sales, enclose in the packages in which the merchandise is put up for market and sale coupons, slips, certificates and other profit-sharing discount or premium tokens. The articles and the persons and companies producing them are enumerated.

The manner or method of disposing of and redeeming and taking up such coupons, etc., is alleged to be that the same are enclosed in packages or the wrappers thereof, or are a part of the wrappers, the packages are put into boxes, cases or other receptacles or enclosures and shipped by the manufacturer or producer from his place of business outside of Florida to the merchants in Florida, generally to a wholesale merchant or jobber, and are received by such in Florida and sold to the retail merchants in that State. The retail merchant sells them to his customers. When the latter have accumulated a sufficient number of the coupons, etc., to entitle them to receive a premium or article or payment therefor according to some list, catalogue or rule promulgated by the manufacturer, producer or original shipper, they send such coupons, etc., to such manufacturer, producer or original shipper, or in some instances, to a company or agency in some State other than Florida, where they are redeemed or paid or the articles which the purchasers have selected are sent to them in consideration of such coupons, etc., or for the same and a postage stamp or stamps or a small sum of money in addition thereto. And this in accordance with the contract, agreement or sale made to the purchasers by the manufacturer, shipper or producer outside of the

State. And it is alleged that the transactions so detailed, the manufacture without the State and shipment to wholesale merchants within the State, the sale by the latter to retail merchants and by the latter again to customers, constitute interstate commerce.

That the form of the coupons, etc., varies and when its identity is secured as prescribed it is evidence that each purchaser of a package has bought a definite part of some article, to be selected by him or her from a certain list, the list showing a number of valuable articles which can be paid for by a certain number of the tokens and a two-cent stamp.

In another case there is an accumulation of the tokens which are to be sent to the redemption or coupon agency or corporation and exchanged for a valuable article of merchandise to be selected by the purchaser from a list or catalogue furnished him.

Another form of coupons, etc., is where each of them is good for a certain value, for instance, one-half cent in presents or premiums, the coupons being sent from the State of Florida to another State. There are also other forms in which the coupons or tokens are to be redeemed, paid for or used in the purchase of other articles of merchandise or in the accumulation of premiums or the like. All of the articles are known and largely used as legitimate articles of commerce and the transactions detailed are interstate commerce.

That divers forms of coupons, etc., in connection with the sale of merchandise are used by the merchants of the State substantially in similar form mentioned above and the payment or redemption is made by the Florida merchant in Florida, sometimes by the delivery of some valuable article of merchandise; sometimes by the payment of cash or the allowance of credit on account of purchases in the nature of a discount or for or on account of a certain amount having been purchased of the merchant by the

customer. The tokens are sometimes in the form of a cash register slip or memorandum.

That the methods detailed are a form of advertising and the use of such coupons, etc., induces purchasers to trade more largely with and to make more of their purchases from complainants on account of the additional inducement of such coupons, etc.; that they increase the businesses of complainants and their profits and enable them to carry and sell stocks of goods covering the various articles of merchandise, and are of great importance and value to complainants in their several businesses; and if they are prevented from using them their businesses will be decreased to the amount of many thousands of dollars.

That at the time of the passage of the statute complainants had on hand large amounts and quantities of goods and if they are prevented from selling them in the manner detailed they will be subjected to great loss and damage, will be embarrassed and injured in their businesses and the value of their property destroyed or greatly lessened.

That the transactions and methods give an additional value to purchasers and they are substantially benefited thereby. That there is no element of gambling or chance in the transactions and nothing in them or their methods prejudicial to the public health, safety, morals or welfare.

That if there is a cessation of the transactions purchasers and customers who have received tokens but have not accumulated a sufficient number of them will be unable to have the same redeemed or paid or secure articles therewith. That about 500 merchants are similarly affected with complainants.

That certificates or tokens commonly called trading stamps and so designated in the statute are substantially like some of the tokens hereinbefore mentioned and

described and when delivered by retail merchants with the various articles sold to purchasers such purchasers are entitled to purchase or receive various valuable articles of merchandise, according to a list or catalogue, upon the presentation of the stamps to some person or company that has issued the trading stamps and that redeems them according to the provisions of such list or catalogue.

That under the statute every person, firm or corporation offering with merchandise any coupon, profit-sharing certificate or other evidence of indebtedness or liability redeemable in premiums is not only liable to pay the license tax for himself or itself but to pay such tax for every other person, firm or corporation who may redeem any such coupon, etc.

That such taxes are unreasonable, enormous and prohibitive on account of the number of articles sold, and by reason of the provision requiring complainants and each and every other person in like situation to pay the license tax to the State, and it is alleged with much circumstance that, from their number and the number of the articles that each sells, each and every person would be required to pay for license tax to the State and for one county or one place of business alone $15,000 per year or one-half that amount for six months or less time.

That as a result of the statute, if the tax be paid for only 100 persons or persons, firms or corporations, it would amount to $75,000 per annum; if for 1000 persons, firms or corporations in Florida for one place of business, it would amount to $750,000, and so on as to any number to be paid by and for each and every of such manufacturer, producer or shipper.

That such coupons, etc., enclosed in packages of tobacco and so delivered are authorized and rendered lawful by section 3394 of the Revised Statutes of the United

States as amended by § 10 of the act of July 24, 1897, 30 Stat. 151, 206, c. 11, and by § 2 of the act of July 1, 1902, 32 Stat. 714, 715, c. 1371.

That the provision of § 35 (the provision quoted above) of the Florida statute and all provisions and enactments for its enforcement are in violation of the Constitution of the United States in that they violate (1) the commerce clause, (2) the due process clause of the Fourteenth Amendment, and (3) the equal protection clause of that amendment. There are many specifications of the particulars and it is alleged: (1) The statute discriminates between merchants in similar lines of business; (2) between merchants who advertise in a certain manner and those who advertise in another manner. (3) The taxes are not upon the business or occupation of complainants but upon the mere incidents of the business and are an unreasonable and illegal interference with the method and manner of conducting the business. (4) The taxes are unreasonable, arbitrary, oppressive, discriminatory and prohibitory for the reasons already detailed and are far in excess of the amounts of taxes or licenses fixed or imposed when other methods of advertising or inducing custom are used and will prevent complainants from carrying on their legitimate business. (5) They are not productive of revenue, are in excess of the profits of the businesses, and are in fact prohibitory. (6) That the methods employed by complainants in no wise affect the public health, morals or welfare, and the imposition of the taxes is in no way a legitimate or lawful exercise of the police power of the State. (7) That the fines are so onerous, drastic, excessive and enormous as to deter complainants in going on and doing business as they have heretofore done and testing the validity of the statute in a court of law.

That by the statute and in § 59 thereof a violation of its provisions is made a misdemeanor and it is provided

in § 35 that for failure to pay any of the license taxes any person, whether acting for himself or as agent of another, may be imprisoned in the county jail, not exceeding six months.

It is further alleged that the statute impairs the obligations of the contracts entered into between complainants and their customers, in violation of clause 1, § 10, Article I, of the Constitution of the United States.

That the officers of the State threaten to enforce the statute and that the State's attorneys, county solicitors and prosecuting attorneys of the several circuits and counties of the State are respectively empowered and authorized to prosecute in the several courts of the State and such officers are threatening to prosecute divers of the complainants, and it is alleged that a multitude of prosecutions will be instituted, with seizures, sales and injury of property if a temporary restraining order be not granted. There is a prayer for such order and for a perpetual injunction.

A restraining order was issued. The defendants appeared specially and filed motions to dismiss the suit and as grounds thereof denied the allegations and implications of the bill as to the various grounds of infringement of the Constitution of the United States charged against the statute, and set up that complainants had a complete and adequate remedy at law. That the bill sought a restraint of the enforcement of a criminal statute of the State and to enjoin an alleged threatened seizure of property in the enforcement of the alleged illegal tax and the enforcement of the collection of a tax imposed by a statute of the State of a general and public nature

A motion was made for an interlocutory injunction, hearing upon which was referred to three judges Upon the hearing the injunction was ordered (214 Fed. Rep. 827), to review which this appeal has been prosecuted.

Mr. Thomas F. West, Attorney General of the State of Florida, for appellant:

The case presented is not within the cognizance of the equity jurisdiction of the Federal courts.

No ground for equitable interposition is shown to exist as against the tax collectors.

A court of equity has no jurisdiction to restrain the prosecuting officers named, because any action taken by them looking to the enforcement of the provisions of this statute is a criminal proceeding, and to enjoin them actually amounts to enjoining the State from proceeding in its own courts.

A part of the business conducted by the appellees being wholly intrastate, the enforcement of the statute cannot violate the commerce clause of the Federal Constitution.

The statute is not in contravention of the due process provisions of the Fourteenth Amendment to the Federal Constitution.

There is a just basis for the classification made by this statute and it does not deny due process of law.

In support of these contentions, see *Odlin* v. *Woodruff*, 31 Florida, 160; *Florida Packing Co.* v. *Carney*, 49 Florida, 293; *S. C.*, 51 Florida, 190; *Metcalf* v. *Martin*, 54 Florida, 531; *Cruickshank* v. *Bidwell*, 176 U. S. 73; *Shelton* v. *Platt*, 139 U. S. 591; *Allen* v. *Pullman Co.*, 139 U. S. 658; *Pac. Exp. Co.* v. *Seibert*, 142 U. S. 339; *Pittsburgh Ry.* v. *Public Works*, 172 U. S. 32; *Arkansas Loan Assn.* v. *Madden*, 175 U. S. 269; *Harrison* v. *Kersey*, 67 Florida, 24; *Bradley* v. *Richmond*, 227 U. S. 477; *Gundlin* v. *Chicago*, 177 U. S. 183; Florida Constitution, Art. V, §§ 5, 37; *Ex parte Nightengale*, 12 Florida, 274; *In re Sawyer*, 124 U. S. 200; *Fitts* v. *McGhee*, 172 U. S. 516; *Ex parte Young*, 209 U. S. 123; *Osborne* v. *Florida*, 164 U. S. 650; *Singer Machine Co.* v. *Brickell*, 233 U. S. 304; *Browning* v. *Waycross*, 233 U. S.

16; *Minnesota Rate Cases*, 230 U. S. 205; *Savage* v. *Jones*, 225 U. S. 501; *Plumley* v. *Massachusetts*, 155 U. S. 461; *Little* v. *Tanner*, 208 Fed. Rep. 605; *State* v. *Pitney*, 140 Pac. Rep. 918; *Lansburg* v. *Dist. of Col.*, 11 App. D. C. 512; *Humes* v. *Ft. Smith*, 93 Fed. Rep. 857; *Wilder* v. *Quebec*, Rap. Jud. Quebec, 25 C. S. 128; *Tap Line Cases*, 234 U. S. 1; *Loewe* v. *Lawlor*, 208 U. S. 274; *Otis* v. *Parker*, 187 U. S. 606; *Central Lumber Co.* v. *South Dakota*, 226 U. S. 157; *Purity Extract Co.* v. *Lynch*, 226 U. S. 192; *Lindsley* v. *Natural Carbonic Co.*, 220 U. S. 61; *Commonwealth* v. *Reinecke Coal Co.* (Ky.), 79 S. W. Rep. 287; *Noble State Bank* v. *Haskell*, 219 U. S. 104; Freund, Police Power, § 3; *Atchison &c. R. R.* v. *Mathews*, 174 U. S. 96; *McLean* v. *Arkansas*, 211 U. S. 539; *Ferguson* v. *McDonald*, 66 Florida, 496; *Afro-Am. Assn.* v. *State*, 61 Florida, 85; *Peninsular Ins. Co.* v. *State*, 61 Florida, 376; *Pullman Co.* v. *Knott*, 235 U. S. 23; *Citizens Tel. Co.* v. *Fuller*, 229 U. S. 322; *Quong Wing* v. *Kirkendall*, 223 U. S. 59; *Patsone* v. *Pennsylvania*, 232 U. S. 138; *Metropolis Co.* v. *Chicago*, 228 U. S. 61; *Atl. Coast Line* v. *Goldsboro*, 232 U. S. 548.

Mr. Charles M. Cooper for appellee:

Where a state statute is attacked as unconstitutional because violating the Federal Constitution and also as violating the constitution of the State, a Federal question is presented, the United States court has jurisdiction and may decide all questions involved.

The provisions of § 35 of the statute of Florida, complained of, are unconstitutional, illegal and void; they are contrary to and in violation of the Fourteenth Amendment as there is no just or reasonable classification upon which the license taxes are based.

Such classification has been repeatedly held by the Supreme Court of the United States to be unconstitutional and in violation of the Fourteenth Amendment.

The Supreme Court of Florida holds that such classifica-

tion renders the statute unconstitutional and void under the Constitution of the United States as well as that of Florida.

There is nothing in the use of coupons, profit-sharing certificates, etc., that is prejudicial to public health, safety, morals or welfare or that brings it under the police power of the State or justifies or authorizes its prohibition or suppression directly or by license taxes, and admit that said license taxes are not imposed for purpose of revenue or taxation.

Many decisions of Federal and state courts hold such classification and coupon taxes as involved in this case unconstitutional and void. See cases in highest courts of Massachusetts, California and New York.

The cases decided in the District of Columbia, even if correctly decided, do not sustain the constitutionality of the Florida statutes.

The imposition of such license taxes is in no way a legitimate exercise of any police power of said State.

The decisions of the Supreme Court of Florida establish also that the courts are the final judges of the validity of such legislation and that such provisions as are contained in this statute are invalid under the Constitution of the United States and of the State of Florida.

Frequency of attempts at similar legislation does not sustain its constitutionality.

The provisions of the Florida statute are contrary to and in violation of the commerce clause of the Federal Constitution and as the provisions covering interstate commerce are void, all the coupon license tax provisions are void.

The statute is unconstitutional in that it requires complainants and persons similarly situated to pay the license taxes of other persons, firms or corporations.

The statute attempts to deprive complainants, and all other persons in like situation, of the right to bestow a

gift or give a premium or share of profits of business, in violation of the Fourteenth Amendment.

The provisions of the statute which impose fines so great and imprisonment so severe as are fixed for nonpayment of said license taxes as to intimidate complainants from continuing to do business and testing the validity of said statute in a court of law are unconstitutional.

Unjust and arbitrary discrimination without any basis of reason and denial to complainants of equal protection of the laws contrary to the Fourteenth Amendment is further shown by grossly discriminating penalties which amount to confiscation of the goods complainants have on hand with inserts of coupons, certificates or the like.

The license taxes upon the face thereof are so exorbitant, onerous and unreasonable as to be manifestly prohibitory and void.

The statute is unconstitutional because contrary to the provisions of the Constitution against impairing the obligation of contracts.

In its virtual prohibition of tobacco insert coupons, certificates or the like, the Florida statute is contrary to the statutes of the United States which authorize such insertions.

MR. JUSTICE MCKENNA, after stating the case as above, delivered the opinion of the court.

It was determined that the bill set forth grounds of equitable relief; that the condition of complainants' businesses and of the property engaged in them was such that the statute, if exerted against complainants and their property, would produce irreparable injury, citing *Ex parte Young*, 209 U. S. 123; *Dobbins* v. *Los Angeles*, 195 U. S. 223; *Davis & Farnum Mfg. Co.* v. *Los Angeles*, 189 U. S. 207. We concur in this view.

Passing on the constitutional questions involved, the

court was of opinion that the statute violated the Fourteenth Amendment and considered it unnecessary to decide whether there was an interference with interstate commerce.

It is not entirely clear upon what clause of the Fourteenth Amendment the court rested its judgment. The equality clause was selected for special comment. After stating the limitation upon legislation and the power of classification, the court proceeds to say: "Is there a just basis for the classification attempted in this section [§ 35] of the act? Merchants, etc., all pay a tax according to the value of the stock carried by each, but if they sell goods for which coupons, etc., are given by themselves or others, then they must pay this additional tax for each place of business in each and every county in which said business is conducted or carried on. And if goods are offered for sale with which coupons are given, redeemable by persons other than the seller, then this tax must be paid by him for each of said lines of goods.

"We can see no just basis for such classification. It is an arbitrary selection of one merchant for the imposition of a 'greater burden' than that imposed on others in the same calling and condition."

But the court went farther and declared that "the use of coupons, etc., was an entirely legitimate method of advertising" and that such had been the ruling in state cases which were cited. And excluding the application of cases adduced by defendants to sustain the statute as an exercise of the police power of the State, the court said: "As before pointed out, this coupon business is legitimate, in no way affecting the health or morals of the community."

Though it is not clear, as we have said, certainly not explicit in the opinion of the court, whether it decided the due process clause as well as the equal protection clause of the Fourteenth Amendment was violated by the statute,

we may assume that the violation of both was decided. It may be that the court thought that even though the use of coupons was a legitimate method of advertising and not affecting the health or morals of the community it was nevertheless within the power of the State to license if the statute were free from discrimination, or it may be that the court considered that the two grounds interlocked and were dependent upon the same reasoning. However, the two grounds may be, indeed must be, taken into consideration as they are submitted for decision.

The ground of discrimination, simply and separated from the other attacks upon the statute, does not present much difficulty. The difference between a business where coupons are used, even regarding their use as a means of advertising, and a business where they are not used, is pronounced. Complainants are at pains to display it. The legislation which regards the difference is not arbitrary within the rulings of the cases. It is established that a distinction in legislation is not arbitrary, if any state of facts reasonably can be conceived that would sustain it, and the existence of that state of facts at the time the law was enacted must be assumed. *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 78. It makes no difference that the facts may be disputed or their effect opposed by argument and opinion of serious strength. It is not within the competency of the courts to arbitrate in such contrariety. *Chi., Burl. & Quincy R. R.* v. *McGuire*, 219 U. S. 549; *German Alliance Ins. Co.* v. *Kansas*, 233 U. S. 389, 413, 414; *Price* v. *Illinois*, 238 U. S. 446, 452.

It is the duty and function of the legislature to discern and correct evils, and by evils we do not mean some definite injury but obstacles to a greater public welfare. *Eubank* v. *Richmond*, 226 U. S. 137, 142; *Sligh* v. *Kirkwood*, 237 U. S. 52, 59. And, we repeat, "it may make discriminations if founded on distinctions that we cannot pronounce unreasonable and purely arbitrary." *Quong*

Wing v. *Kirkendall*, 223 U. S. 59, 62, and the cases cited above.

Of course, an element to be considered is the authority of the legislature over the subject-matter, and this will best be examined in considering the contentions of complainants under the due process clause. Preceding that, however, are the contentions based on the commerce clause and the sanction which the Constitution gives to the integrity of contracts.

First, as pertinent to our discussion, are the specific schemes at which, it is said, the statute is directed, and we adopt complainants' description of them. The first is "where the Florida merchant issues his own coupon, certificate or cash register receipt and himself makes payment or redemption of the same, sometimes by the delivery of some valuable article of merchandise, sometimes by the payment of cash or allowance of credit on account of purchases, being in the nature of a discount, or for or on account of a certain amount having been purchased of the merchant by the customer." In a word, it is a case where the Florida merchant issues his own coupons and redeems them.

The second is "where the manufacturer or shipper outside of the State of Florida, in some other State of the Union, inserts such coupons or certificates in packages of his goods which he ships to Florida, and the ultimate purchaser or consumer takes such coupons or certificates from such packages and returns them to such manufacturer or shipper in such State outside of Florida, who gives a premium for them and sends such premium or proceeds of redemption to such ultimate purchaser or consumer in Florida who has forwarded to him such coupons or certificates." The merchandise so shipped into Florida is kept in stock by the merchants of the State and the coupons, etc., are delivered upon the sale of the merchandise to their customers, who have them redeemed in the

manner described. That is, the coupons are redeemed by the person who originally issues them; the coupons, however, to repeat, being delivered by the Florida merchant as a part of the transaction between him and the purchaser from him at retail.

The third is "where the manufacturer or shipper in a State other than Florida inserts in the packages of his goods which he ships to Florida such coupons or certificates which are taken from the packages by the ultimate purchaser or consumer in Florida and sent to some company or agency in some State of the United States outside of the State of Florida other than the manufacturer or shipper of the goods, to be redeemed or paid, and the premium or proceeds thereof is returned by such company or agency to the person in Florida who has sent such coupons or certificates." This differs from the other two cases in that a premium company or agency other than the manufacturer or shipper himself is used for the redemption or payment of the coupons or certificates. But here again the Florida merchant is a factor because it is in completion of the sale by him at retail that the coupons are delivered to the purchasers.

We are careful, by much repetition, to show the difference between the cases, to distinguish between the premium systems, and to show, as urged by counsel, that this case is not concerned with a license tax upon a trading stamp business pure and simple, a license upon companies engaged in such business being provided by another section of the statute.[1]

It is well here to observe, to avoid misunderstanding, that the redemption in the first scheme is "*sometimes by the payment of cash or allowance of credit on account of*

[1] "Sec. 55, p. 51. Trading Stamp Firms: Persons or firms or corporations known as trading stamp companies, shall pay a State license tax of one thousand ($1,000.00) dollars in each county where they transact any business."

purchases or for or on account of a certain amount having been purchased of the merchant by the customer." We are not concerned with a statute directed solely at such method of redemption or a business so confined. The Florida statute imposes its license tax on coupons, etc., "redeemable in premiums." And therefore, whether any other method of redemption—be it by giving a discount or an allowance of credit simply—would be amenable to objection we express no opinion. In all of the schemes other methods of redemption are used and are attempted to be justified.

With this comment we may say that all of the schemes have a common character—something is given besides that which is or is supposed to be the immediate incentive to the transaction of sale and purchase, something of value given other than it; and even as to the second and third schemes, the transactions are only executed through the purchase at retail. In other words, they are not designed for or executed through a sale of the original package of importation but in the packages of retail and sale to the individual purchaser and consumer. This fixes their character as transactions within the State and not as transactions in interstate commerce, and this is conceded as to the first scheme; it is true as to the second and third schemes. All of the schemes have their influence and effect within the State. Nor is such influence and effect changed or lessened by the redemption of the tokens outside of the State.

The transactions, therefore, are not in interstate commerce. The sales, as we have said, are not in the packages of that commerce, they are essentially local sales, schemes consummated by such sales, and it is upon them and on account of their effect that the statute has imposed its license tax, and not upon the shipment into the State nor their disposition in the packages of importation. Of course, there is shipment to Florida merchants but

for the disposition of the merchandise in retail trade. The schemes contemplate such disposition and are executed by it. Detach the importations from the retail sale, consider only the transportation to the State of merchandise in its original package, being sold therein in such package, and there may, indeed, be interstate commerce; but so detached and so considered the importations are left without purpose, the schemes without execution. Indeed, complainants contend for the right not only of importations in the original package containing the coupons but the disposition of the goods and coupons through the retail merchant. This, we repeat, has no protection in the commerce clause.

Nor is the regulation of the statute prohibited by § 3394, Rev. Stat. as amended in 1897 (July 24, c. 11, § 10, 30 Stat. 151, 206) and 1902 (July 1, c. 1371, § 2, 32 Stat. 714, 715). Section 3394 provides for a tax on cigars and cigarettes. By the amendment of 1897 it was forbidden to pack in, attach to or connect with any package of tobacco or cigarettes anything but the wrappers, and it was futher provided that there should not be affixed to, or branded, stamped, marked, written or printed upon the packages or their contents any promise or offer of, or any order or certificate for, any gift, prize, premium, payment, or reward. This provision upset the practice of manufacturers and was attacked on the ground that it was beyond the power of Congress under the Constitution to enact, the prohibited practice being a method of advertising. The provision was sustained. *Felsenhead* v. *United States*, 186 U. S. 126, affirming 103 Fed. Rep. 453. In 1902 the paragraph containing the provision was amended so as to forbid the enclosure or attachment to the packages of "any paper, certificate, or instrument purporting to be or representing a ticket, chance, share or interest in, or dependent upon the event of a lottery,

or any indecent or immoral picture, representation, print or words."

Let it be granted that this provision permitted the enclosure in the package of tobacco of tokens of the character with which this case is concerned. It goes no farther nor does it purport to go farther. It does not attempt to protect and enforce the permission to the retail sales of packages in the State. It might not legally have such effect if attempted; and such attempt will not lightly be inferred. *Savage* v. *Jones*, 225 U. S. 501; *Standard Food Co.* v. *Wright*, 225 U. S. 540. The statute of Florida does not seek to control the interstate transportation of the packages, it controls only their sale in the State through the retail merchant, or, it may be, directly to the individual consumer for the purpose described, and in both cases for the ultimate redemption of the tokens delivered with the sale.

McDermott v. *Wisconsin*, 228 U. S. 115, is not applicable. There Congress, for the effective execution of the Food and Drugs Act, defined what the "package" of commerce should be, and necessarily any law which conflicted with it was void. In the case at bar there is no such definition. There is only permission to insert in the package whatever the manufacturer of tobacco may choose, with a single exception. There is no compulsion of use, and omission to avail of the permission has no effect upon the purpose of Congress in the enactment of the revenue laws which provide for the packing of tobacco products.

The contract clause of the Constitution is also unavailable to complainants. The statute must be held to have prospective operation. Sales completed before its enactment are unaffected by it. We say "sales completed," and by this we mean those in which the right of redemption according to some of the schemes has accrued as distinguished from what is alleged in the bill as "the

understanding and expectation" arising from one or more sales that complainants would continue to sell to such purchasers other articles so that they might be able to accumulate tokens and use them. It cannot be said that there is an obligation to continue sales or an obligation to continue purchases. Besides, as the business is subject to regulation the contracts made in its conduct are subject to such regulation. *Louis. & Nash. R. R.* v. *Mottley*, 219 U. S. 467, and *N. Y. Central R. R.* v. *Gray*, 239 U. S. 583.

Having disposed of the other contentions of complainants, we are brought to a consideration of the question whether the statute of Florida offends the due process clause of the Fourteenth Amendment of the Constitution. In other words, does the statute interfere with the business liberty of complainants? Is it an illegal meddling with a lawful calling and a deprivation of freedom of contract? This is the contention, and it is attempted to be supported by the assertion that the schemes detailed in the bill are but a method of advertising and, as such mere allurements to customers, not detrimental in any way to the public health and morals, nor obstructive of the public welfare; but are a means of enterprise, mere incidents of the businesses of complainants and as beneficial to their customers as to them. And besides that they are but a method of giving discount, practically in some instances a rebate upon the price, and in others an equivalent gift of some article that may attract the choice of the purchaser, the choice being free and the article of definite utility and value.

These contentions have the support of a number of cases. They are opposed by others, not nearly so numerous as the supporting cases but marking a change of opinion. Both sets of cases indicate by the statutes passed upon a persistent legislative effort against the schemes under review or some form of them, beginning in 1880 and

repeated from time to time until the statute in controversy was passed in 1913.[1] In such differences between judicial and legislative opinion where should the choice be? That necessarily depends upon what reasoning judicial opinion was based. We appreciate the seriousness of the situation. Regarding the number of the cases only, they constitute a body of authority from which there might well be hesitation to dissent except upon clear compulsion.

The foundation of all of them is that the schemes detailed are based on an inviolable right, that they are but the exercise of a personal liberty secured by the Constitution of the United States and distinguished from other lawful exercise of business contracts and activity by a method of advertising and lawful inducements to an increased custom and that in them there is no element of chance or anything detrimental to the public welfare. But there may be partial or total dispute of the propositions. And it can be urged that the reasoning upon which they are based regards the mere mechanism of the schemes alone and does not give enough force to their influence upon conduct and habit, not enough to their insidious potentialities. As to all of which not courts but legislatures may be the best judges and, it may be, the conclusive judges.

This may be illustrated. A lottery of itself is not wrong, may be fairer, having less of overreaching in it, than many of the commercial transactions that the Constitution protects. All participants in it have an equal chance; there is no admonishing caveat of one against the other. And at one time it was lawful. It came to be condemned by experience of its evil influence and effects. It is trite to say that practices harmless of themselves may, from

[1] It is said that 23 States have attempted either to prohibit or to license the selling or use of trading stamps and coupons. And there has been like legislation for the District of Columbia and the Territory of Hawaii.

circumstances, become the source of evil or may have evil tendency. *Murphy v. California*, 225 U. S. 623.

But no refinement of reason is necessary to demonstrate the broad power of the legislature over the transactions of men. There are many lawful restrictions upon liberty of contract and business. It would be an endless task to cite cases in demonstration, and that the supplementing of the sale of one article by a token given and to be redeemed in some other article has accompaniments and effects beyond mere advertising the allegations of the bill and the argument of counsel establish. Advertising is merely identification and description, apprising of quality and place. It has no other object than to draw attention to the article to be sold, and the acquisition of the article to be sold constitutes the only inducement to its purchase. The matter is simple, single in purpose and motive; its consequences are well defined, there being nothing ulterior; it is the practice of old and familiar transactions and has sufficed for their success.

The schemes of complainants have no such directness and effect. They rely upon something else than the article sold. They tempt by a promise of a value greater than that article and apparently not represented in its price, and it hence may be thought that thus by an appeal to cupidity lure to improvidence. This may not be called in an exact sense a "lottery," may not be called "gaming"; it may, however, be considered as having the seduction and evil of such, and whether it has may be a matter of inquiry, a matter of inquiry and of judgment that it is finally within the power of the legislature to make. Certainly in the first instance, and, as we have seen, its judgment is not impeached by urging against it a difference of opinion. *Chic., Burl. & Quincy R. R.* v. *McGuire* and *German Alliance Ins. Co.* v. *Kansas, supra.* And it is not required that we should be sure as to the precise reasons for such judgment or that we should certainly know them

or be convinced of the wisdom of the legislation. *Southwestern Oil Co.* v. *Texas*, 217 U. S. 114, 126, 127. See also *Munn* v. *Illinois*, 94 U. S. 113, 132.

But it may be said that judicial opinion cannot be controlled by legislative opinion of what are fundamental rights. This is freely conceded; it is the very essence of constitutional law, but its recognition does not determine supremacy in any given instance. "While the courts must exercise a judgment of their own, it by no means is true that every law is void which may seem to the judges who pass upon it excessive, unsuited to its ostensible end, or based upon conceptions of morality with which they disagree. Considerable latitude must be allowed for differences of view as well as for possible peculiar conditions which this court can know but imperfectly, if at all. Otherwise a constitution, instead of embodying only relatively fundamental rules of right, as generally understood by all English-speaking communities, would become the partisan of a particular set of ethical or economical opinions, which by no means are held *semper ubique et ab omnibus*." *Otis* v. *Parker*, 187 U. S. 606, 608, 609.

That case illustrated the reach of the power of government to protect or promote the general welfare. It sustained a provision of the constitution of the State of California which made void all contracts for the sale of the stock of corporations on margin or to be delivered at a future day. The practice had been common, its evil was disputed. It was attempted to be justified by argument very much like those advanced in the case at bar, but this court decided that the legislative judgment was controlling.

Even more pertinent in illustration of the power of the States as unaffected by the Fourteenth Amendment is *Central Lumber Co.* v. *South Dakota*, 226 U. S. 157. A statute of the State was sustained which provided that any one engaged in the manufacture, production or dis-

tribution of any commodity in general use, who should intentionally, for the purpose of destroying the competition of any regular, established dealer, discriminate between different places by selling such commodity at a lower rate in one place than such person charged in another, after equalizing the distance from the point of production, should be guilty of a crime. Freedom of conduct was restricted by the statute which had its incentive in trade advantages. It was the judgment of the legislature that such practice was an impediment to the public welfare. The legislative judgment was sustained against the attack, among others, that the law was an infringement of freedom of conduct and contract.

In *Keokee Coke Co.* v. *Taylor*, 234 U. S. 224, the company issued scrip payable in merchandise only from its store as an advance of monthly wages in payment of labor performed. A statute of the State (West Virginia) prohibited the issue of any order for the payment of labor unless it was redeemable in money. The statute was assailed on the ground that it interfered with the freedom of contract. It will be observed that there was a consideration for the order payable in merchandise; it was a payment in advance, and hence it was asserted that the statute was an injury to the employees and employers. There were elements in the transactions of apparent advantage to both and it would seem to have been within the liberty of both to contract upon an estimate of the value of that advantage. It was deemed an evil by the legislature and this court sustained its judgment.

In *Erie R. R.* v. *Williams*, 233 U. S. 685, a law of the State of New York required railroad companies to pay their employés semi-monthly and prohibited them from making contracts which should vary the time of payment. The law was sustained mainly upon the ground that it was an amendment of the charter of the corporation, but the extent of the police power was adverted to and the com-

petency of the legislature exercising that power to enact the legislation. The incentive of the legislation was the benefit which accrued to the employees by the period of payment. The public welfare was deemed to be promoted by it.

Other cases might be cited and, it may be, of more pertinent application, which, from their number and instances, would seem to have uttered the last necessary word upon the power of the legislature to regulate conduct and contracts and in the exercise of the power to classify objects, upon its conception of the public welfare, the right of review to be exerted by the courts only when the legislation is unreasonable or purely arbitrary.

Complainants allege that the license tax which the statute imposes is of prohibitory character and assert that they are exercising inviolable rights and privileges which the excess of the tax prevents in violation of the Fourteenth Amendment; they contend that hence the statute is invalid.

It is not certain from the allegations of the bill that the tax is of the asserted character, but granting it to be so we have shown that the business schemes described in the bill are not protected from regulation or prohibition by the Constitution of the United States. *Lawton* v. *Steele*, 152 U. S. 133; *Booth* v. *Illinois*, 184 U. S. 425; *Otis* v. *Parker*, 187 U. S. 606; see also *Dobbins* v. *Los Angeles*, 195 U. S. 223, 238; *Murphy* v. *California*, 225 U. S. 623; *Postal Telegraph Co.* v. *Charleston*, 153 U. S. 692, 699; *McCray* v. *United States*, 195 U. S. 27; *Kehrer* v. *Stewart*, 197 U. S. 60; *Hammond Packing Co.* v. *Montana*, 233 U. S. 331.

The contention that the statute intimidates against a contest of its legality by the severity of its penalties and is therefore unconstitutional on that ground within the ruling in *Ex parte Young*, 209 U. S. 123, is not justified.

Order reversed and case remanded with directions to dismiss the bill.